

# APPROPRIATIONS

## CHAPTER 1

### HOUSE BILL NO. 1001

(Appropriations Committee)

### LEGISLATIVE BRANCH

AN ACT providing an appropriation for defraying the expenses of the legislative branch of government; to amend and reenact the new section to chapter 54-35 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2395, as approved by the fifty-fourth legislative assembly, relating to the authority of the legislative council to appoint or retain legal counsel to protect the interests of the legislative branch in actions and proceedings; to provide for a legislative council study; to provide for a technology applications committee of members from the budget section; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative branch of the state government for the purpose of defraying the expenses of that branch, for the fiscal period beginning with the effective date of this Act and ending June 30, 1997, as follows:

Subdivision 1.

**FIFTY-FOURTH AND FIFTY-FIFTH LEGISLATIVE ASSEMBLIES AND BIENNIUM**

Salaries and wages	\$ 4,013,977
Operating expenses	2,189,131
Equipment	15,000
National conference of state legislatures	138,108
Total general fund appropriation	\$ 6,356,216

Subdivision 2.

**LEGISLATIVE COUNCIL**

Salaries and wages	\$ 3,279,573
Operating expenses	1,394,852
Equipment	11,825
Total general fund appropriation	\$ 4,686,250
Grand total general fund appropriation	\$11,042,466

**SECTION 2. TRANSFERS.** The director of the office of management and budget and the state treasurer shall make transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or the chairman's designee upon the finding by the chairman or designee that the nature of studies and duties assigned to the council requires the transfers in properly carrying on the council's functions and duties. The director of the office of

management and budget and the state treasurer shall similarly make transfers of funds between the line items for the fifty-fourth and fifty-fifth legislative assemblies, upon request by the chairman of the legislative council or the chairman's designee upon the finding by the chairman or designee that the transfers are required for the legislative assembly to carry on its functions and duties.

<sup>1</sup> **SECTION 3. AMENDMENT.** The new section to chapter 54-35 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2395, as approved by the fifty-fourth legislative assembly, is amended and reenacted as follows:

**Retention of legal counsel.** When the legislative assembly is in session, either house by resolution may authorize, or both houses by concurrent resolution may direct, the legislative council to appoint or retain legal counsel to appear in, commence, prosecute, defend, or intervene in any action, suit, matter, cause, or proceeding in any court or agency when deemed necessary or advisable to protect the official interests of the legislative branch. When the legislative assembly is not in session, the legislative council, by a two-thirds vote, may appoint or retain legal counsel to appear in, commence, or prosecute, or by a majority vote, may appoint or retain legal counsel to defend; or intervene in, any action, suit, matter, cause, or proceeding in any court or agency when deemed necessary or advisable to protect the official interests of the legislative branch. Section 54-12-08 does not apply to a person appointed or retained under this section.

**SECTION 4. INTERIM TECHNOLOGY APPLICATIONS COMMITTEE.** It is the intent of the legislative assembly that the legislative council appoint a technology applications committee during the 1995-96 interim from members of the budget section. The technology applications committee shall make recommendations on expenditures for and installation of computers for the legislative assembly.

**SECTION 5. LEGISLATIVE COUNCIL STUDY OF BOARDS AND COMMISSIONS.** The legislative council may study the membership, duties, and responsibilities of all boards, councils, committees, and commissions of state government. The study should include consideration of whether any of the boards, councils, committees, and commissions have overlapping powers and duties, whether any boards, councils, committees, and commissions should be eliminated or consolidated, whether each board, council, committee, and commission presently performs the functions for which it was originally created, and whether the membership of each board, council, committee, and commission is responsive to the people of the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-fifth legislative assembly.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 13, 1995  
Filed April 18, 1995

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<sup>1</sup> Section 3 of this Act was created by section 1 of Senate Bill No. 2395, chapter 519.



**CHAPTER 2****HOUSE BILL NO. 1002**  
(Appropriations Committee)**JUDICIAL BRANCH**

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide for a study of the allocation of unified court revenues and costs; to amend and reenact sections 11-17-04, 11-17-05, 27-02-02, 27-03-05, and 27-05-03 of the North Dakota Century Code, relating to fees charged by the clerks of the district and supreme courts and the salaries of supreme and district court judges; to repeal section 14-06.1-15 of the North Dakota Century Code, relating to the displaced homemakers account; and to provide an effective date.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the judicial branch for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.****SUPREME COURT**

Salaries and wages	\$ 4,617,927
Operating expenses	1,707,240
Equipment	125,980
Judges retirement	319,416
Total all funds	\$ 6,770,563
Less estimated income	55,672
Total general fund appropriation	\$ 6,714,891

**Subdivision 2.****DISTRICT COURTS**

Salaries and wages	\$19,702,589
Operating expenses	6,502,487
Equipment	520,562
Judges retirement	974,010
Total all funds	\$27,699,648
Less estimated income	259,541
Total general fund appropriation	\$27,440,107

**Subdivision 3.****JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD**

Salaries and wages	\$ 328,935
Operating expenses	134,200
Equipment	10,000
Total all funds	\$ 473,135
Less estimated income	72,000
Total general fund appropriation	\$ 401,135

Grand total general fund appropriation H.B. 1002	\$34,556,133
Grand total special funds appropriation H.B. 1002	\$ 387,213
Grand total all funds appropriation H.B. 1002	\$34,943,346

**SECTION 2. APPROPRIATION.** There is hereby appropriated any funds received by the supreme court and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in the federal acts or private gifts, grants, and donations for the period beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. TRANSFERS.** The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriation for the judicial branch of government as may be requested by the supreme court upon a finding by the court that the nature of the duties of the court and its staff requires the transfers to carry on properly the functions of the judicial branch of government.

**SECTION 4. EXEMPTION.** The supreme court equipment appropriation contained in section 1 of chapter 24 of the 1993 Session Laws is not subject to section 54-44.1-11, and \$75,565 of the unexpended funds from this appropriation are available for the purchase of a photocopier during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. LEGISLATIVE COUNCIL STUDY OF ALLOCATION OF UNIFIED COURT REVENUES AND COSTS.** The legislative council shall study the unified court system with emphasis on the distribution of court revenues and the allocation of the costs of the system between the counties and the state. The study must include consideration of the allocation of costs and revenues that existed under the county court system and the redistribution of costs and revenues under existing statutes as well as changes that should be made to more equitably handle the funding of the unified court system. The legislative council shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the fifty-fifth legislative assembly.

**SECTION 6. AMENDMENT.** Section 11-17-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**11-17-04. Fees to be charged by the clerk of the district court.**

1. The clerk of the district court shall charge and collect the following fees in civil cases:

~~1-~~ a. For filing a case for decision ~~in district court which~~ that is not a small claims action, ~~twenty~~ eighty dollars.

~~2-~~ (1) Ten dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund.

(2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14.

- (3) For all other filings, fourteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
- b. For filing an answer to a case that is not a small claims action, fifty dollars.
- c. For filing a small claims action in district court, ten dollars.
- 3- d. For filing any matter authorized to be filed in the office of the clerk of court other than a case for decision in subsections 1 and 2 under subdivision a, b, or c, five dollars.
- 4- e. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.
- 5- f. For filing a motion to modify an order for alimony, property division, child support, or child custody, ~~twenty~~ thirty dollars. The clerk shall deposit this fee collected under this subsection must be deposited with the county treasurer as provided under section 11-17-05 and thereafter must be deposited with the state treasurer and credited to the state for deposit in the general fund of the state treasury.

In addition to the fee required under subsection 1, the clerk of court shall charge and collect a fee of ten dollars. This fee must be deposited with the county treasurer as provided under section 11-17-05 and thereafter must be deposited with the state treasurer and credited to an indigent civil legal services fund in the state treasury.

- g. For filing an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars.
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the county, or agencies thereof, in which the office of the clerk of court is located nor may the clerk of court charge or collect the additional ten dollar fee prescribed by this section from the state or an agency thereof or from a political subdivision or agency thereof.

**SECTION 7. AMENDMENT.** Section 11-17-04 of the North Dakota Century Code as amended by section 6 of this Act is amended and reenacted as follows:

**11-17-04. Fees to be charged by the clerk of the district court.**

1. The clerk of the district court shall charge and collect the following fees in civil cases:
- a. For filing a case for decision that is not a small claims action, eighty dollars.
- (1) Ten dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund.

- (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14.
  - (3) For all other filings, ~~fourteen~~ fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
- b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
  - c. For filing a small claims action in district court, ten dollars.
  - d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, five dollars.
  - e. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.
  - f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.
  - ~~g.~~ For filing an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars.
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof.

**SECTION 8. AMENDMENT.** Section 11-17-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**11-17-05. Clerk to keep record of fees - Monthly report to county auditor.** The clerk of the district court shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month and also at the close of the clerk's term of office, the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report, and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which must be used for facilities, except fees ~~which that~~ the clerk is directed to deposit with the state treasurer or is authorized expressly to retain.

**SECTION 9. AMENDMENT.** Section 27-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-02-02. Salaries of judges of supreme court.** ~~Each~~ The annual salary of each judge of the supreme court is entitled to receive an annual salary of seventy-one ~~seventy-five thousand seventy-five~~ nine hundred thirty-six ~~dollars through June 30, 1992~~ 1996, and ~~seventy-one~~ seventy-seven ~~thousand five~~ four ~~hundred fifty-five~~

forty-eight dollars thereafter. The chief justice of the supreme court is entitled to receive an additional two thousand one hundred thirty-six dollars per annum through June 30, ~~1992~~ 1996, and two thousand forty one hundred eighty-four dollars per annum thereafter.

**SECTION 10. AMENDMENT.** Section 27-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-03-05. Fees to be charged and collected by clerk of supreme court.** The clerk of the supreme court shall charge and collect in advance a fee of fifty one hundred twenty-five dollars upon the filing in the supreme court of the record in any cause upon appeal, or upon the filing in such court of a petition in any cause seeking the exercise of the original jurisdiction thereof.

**SECTION 11. AMENDMENT.** Section 27-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-05-03. Salaries and expenses of district judges.** ~~Each~~ The annual salary of each district judge of this state is entitled to receive an annual salary of sixty-five ~~seventy~~ thousand four hundred ninety sixty-eight ~~seventy~~ dollars through June 30, ~~1992~~ 1996, and sixty-five seventy-one thousand nine four hundred seventy ~~seventy-two~~ dollars thereafter. Each district judge is entitled to ~~actual~~ travel expenses including mileage and subsistence while engaged in the discharge of official duties outside the county in which the judge's chambers are located. ~~Such~~ The salary and expenses ~~shall be~~ are payable monthly in the manner provided by law. ~~Each district judge who has been appointed by the supreme court to act as A~~ A presiding judge of a judicial district is entitled to receive an additional one thousand five six hundred fifty ~~fifty-six~~ dollars per annum, through June 30, ~~1992~~ 1996, and one thousand five six hundred eighty-one ninety-two ~~eighty-one~~ dollars thereafter.

**SECTION 12. REPEAL.** Section 14-06.1-15 of the North Dakota Century Code is repealed.

**SECTION 13. EFFECTIVE DATE.** Section 7 of this Act becomes effective on July 1, 1997.

Approved April 11, 1995

Filed April 12, 1995

**CHAPTER 3****HOUSE BILL NO. 1003**

(Appropriations Committee)

**BOARD OF HIGHER EDUCATION**

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system and the various institutions of higher learning under the supervision of the state board of higher education; to provide an exemption to the provisions of section 54-44.1-11; to authorize an agreement for the operation and leasing of the North Dakota state art gallery; to amend and reenact section 15-10-12 of the North Dakota Century Code, relating to higher education special funds; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the state board of higher education and to the various institutions of higher learning under the supervision of the state board of higher education for the purpose of defraying their expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.****NORTH DAKOTA UNIVERSITY SYSTEM OFFICE**

Salaries and wages	\$ 1,819,041
Operating expenses	583,993
Equipment	18,000
ADA projects	500,000
Small campus projects	500,000
Capital improvements - emergencies	200,000
Computer network management	201,465
Higher education contingency fund	25,000
Professional student exchange program	1,326,756
Postsecondary review program	198,000
Experimental program to stimulate competitive research	1,980,000
Scholars program	496,403
Perkins loan program match	102,885
Title II grant	621,000
Paul Douglas scholarship	99,420
Student financial assistance grants	3,782,478
Disabled student services	26,170
Native American scholarships	200,000
College technical administration	168,270
Total all funds	\$ 12,848,881
Less estimated income	2,668,420
Total general fund appropriation	\$ 10,180,461

**Subdivision 2.****BISMARCK STATE COLLEGE**

Salaries and wages	\$ 13,779,211
Operating expenses	3,669,311
Equipment	436,000
Capital improvements	<u>150,000</u>
Total all funds	\$ 18,034,522
Less estimated income	<u>6,760,000</u>
Total general fund appropriation	\$ 11,274,522

## Subdivision 3.

## UNIVERSITY OF NORTH DAKOTA-LAKE REGION

Salaries and wages	\$ 3,911,768
Operating expenses	1,190,650
Equipment	138,838
Capital improvements	<u>27,500</u>
Total all funds	\$ 5,268,756
Less estimated income	<u>1,424,798</u>
Total general fund appropriation	\$ 3,843,958

## Subdivision 4.

## UNIVERSITY OF NORTH DAKOTA-WILLISTON

Salaries and wages	\$ 4,516,993
Operating expenses	1,386,159
Equipment	179,596
Capital improvements	<u>17,432</u>
Total all funds	\$ 6,100,180
Less estimated income	<u>2,228,568</u>
Total general fund appropriation	\$ 3,871,612

## Subdivision 5.

## UNIVERSITY OF NORTH DAKOTA

Salaries and wages	\$ 95,973,564
Operating expenses	25,214,113
Equipment	2,174,744
Capital improvements	3,770,000
Interactive video network	<u>1,767,099</u>
Total all funds	\$128,899,520
Less estimated income	<u>50,067,227</u>
Total general fund appropriation	\$ 78,832,293

## Subdivision 6.

## NORTH DAKOTA STATE UNIVERSITY

Salaries and wages	\$ 77,385,337
Operating expenses	23,460,952
Equipment	1,718,000
Capital improvements	<u>1,129,950</u>
Total all funds	\$103,694,239
Less estimated income	<u>41,424,964</u>
Total general fund appropriation	\$ 62,269,275

## Subdivision 7.

## NORTH DAKOTA STATE COLLEGE OF SCIENCE

Salaries and wages	\$ 20,274,006
Operating expenses	5,754,933
Equipment	1,209,664
Capital improvements	<u>273,000</u>
Total all funds	\$ 27,511,603

Less estimated income	8,057,754
Total general fund appropriation	<u>\$ 19,453,849</u>

## Subdivision 8.

## DICKINSON STATE UNIVERSITY

Salaries and wages	\$ 12,197,565
Operating expenses	3,423,234
Equipment	229,700
Capital improvements	<u>150,000</u>
Total all funds	\$ 16,000,499
Less estimated income	<u>5,212,354</u>
Total general fund appropriation	<u>\$ 10,788,145</u>

## Subdivision 9.

## MAYVILLE STATE UNIVERSITY

Salaries and wages	\$ 7,321,084
Operating expenses	1,971,000
Equipment	161,000
Capital improvements	<u>45,000</u>
Total all funds	\$ 9,498,084
Less estimated income	<u>2,612,305</u>
Total general fund appropriation	<u>\$ 6,885,779</u>

## Subdivision 10.

## MINOT STATE UNIVERSITY

Salaries and wages	\$ 27,450,902
Operating expenses	5,449,230
Equipment	667,168
Capital improvements	<u>669,162</u>
Total all funds	\$ 34,236,462
Less estimated income	<u>14,322,100</u>
Total general fund appropriation	<u>\$ 19,914,362</u>

## Subdivision 11.

## VALLEY CITY STATE UNIVERSITY

Salaries and wages	\$ 9,663,822
Operating expenses	2,443,719
Equipment	251,000
Capital improvements	525,000
Special initiatives	<u>200,000</u>
Total all funds	\$ 13,083,541
Less estimated income	<u>3,638,289</u>
Total general fund appropriation	<u>\$ 9,445,252</u>

## Subdivision 12.

## NORTH DAKOTA STATE UNIVERSITY-BOTTINEAU

Salaries and wages	\$ 3,540,686
Operating expenses	941,556
Equipment	110,000
Capital improvements	<u>49,000</u>
Total all funds	\$ 4,641,242
Less estimated income	<u>1,406,207</u>
Total general fund appropriation	<u>\$ 3,235,035</u>

## Subdivision 13.

## NORTH DAKOTA FOREST SERVICE



Salaries and wages	\$ 1,554,977
Operating expenses	376,379
Equipment	36,976
Capital improvements	71,061
Grant to centennial trees	147,486
Total all funds	\$ 2,186,879
Less estimated income	810,526
Total general fund appropriation	\$ 1,376,353

## Subdivision 14.

## UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER

Salaries and wages	\$ 55,659,829
Operating expenses	18,792,222
Equipment	940,187
Total all funds	\$ 75,392,238
Less estimated income	49,549,391
Total general fund appropriation	\$ 25,842,847
Grand total general fund appropriation H.B. 1003	\$267,863,743
Grand total special funds appropriation H.B. 1003	\$193,582,903
Grand total all funds appropriation H.B. 1003	\$461,446,646

**SECTION 2. APPROPRIATION TRANSFER.** The higher education contingency fund and disabled student services in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 1 through 14 of section 1 as determined by the state board of higher education. The board shall notify the office of management and budget of the allocation of general fund authority from the higher education contingency fund and disabled student services to the various entities and institutions and which line items in the various institutions and entities must be adjusted.

**SECTION 3. CONTINGENT APPROPRIATION - NORTH DAKOTA STATE COLLEGE OF SCIENCE.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, from special funds derived from federal funds, the sum of \$900,000, and from special funds derived from other income, the sum of \$500,000, or so much of the sums as may be necessary to the North Dakota state college of science for the purpose of remodeling Bute gymnasium for use as an allied health center for the biennium beginning July 1, 1995, and ending June 30, 1997. The general fund appropriation provided for in this section may be spent only upon certification to the state treasurer that the North Dakota state college of science has received commitments to provide the \$500,000 of special funds derived from other income for the project.

**SECTION 4. APPROPRIATION.** Operating fund income received in excess of the estimated income line item appropriated to the entities in section 1 of this Act which is deposited in their respective operating funds in the state treasury up to the following amounts is hereby appropriated and may be spent subject to board of higher education approval:

INSTITUTION	AMOUNT
North Dakota university system office	\$ 80,052
Bismarck state college	202,800
University of North Dakota - Lake Region	42,744
University of North Dakota - Williston	66,857
University of North Dakota	1,425,667
North Dakota state university	1,236,749

North Dakota state college of science	241,733
Dickinson state university	156,371
Mayville state university	78,369
Minot state university	429,663
Valley City state university	109,149
North Dakota state university - Bottineau	42,186
North Dakota state forest service	24,316
University of North Dakota medical school	<u>1,486,482</u>
Total	\$5,623,138

Any additional excess estimated income is hereby appropriated and may be spent only upon authorization of the emergency commission. Any funds received by the board of higher education and the entities of the North Dakota university system pursuant to federal acts, private grants, and other sources not deposited in the operating funds in the state treasury are hereby appropriated for the period beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. TRANSFERS.** Each institution or agency included in subdivisions 1 through 14 of section 1, upon approval of the state board of higher education, may make such transfers between line items in its appropriation as may be determined necessary by the board for operation of the institution or agency except that the board may not approve transfers from any capital improvements line item. The board shall notify the office of management and budget of each transfer.

**SECTION 6. EXEMPTION.** The scholars program, higher education contingency fund, student financial assistance grants, professional student exchange program appropriations, and operating expenses contained in subdivision 1 of section 1 of chapter 3 of the 1993 Session Laws are not subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations are available during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 7. DEPOSIT OF FUNDS.** Up to \$1,350,000 of funds received from Minnesota by the board of higher education pursuant to the reimbursement provisions of the Minnesota-North Dakota public higher education and vocational technical education tuition reciprocity agreement authorized by chapter 15-10.1 must be deposited in the board of higher education special revenue fund in the state treasury. These funds must be used for the North Dakota student financial assistance program authorized by chapter 15-62.2.

**SECTION 8. STATE ART GALLERY - AUTHORITY TO OPERATE AND LEASE.** The state board of higher education may enter into an agreement with a private foundation headquartered within or outside of this state for the operation and lease of the North Dakota state art gallery.

**SECTION 9. FOREST SERVICE - CENTENNIAL TREES PROGRAM TRUST FUND.** The estimated income line item in subdivision 13 of section 1 of this Act includes \$147,486 from the centennial trees program trust fund for providing grants. The grants must be used for planting trees and other expenses associated with achieving the goal of planting 100 million trees by the year 2000, including promotional, educational, and fundraising activities for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 10. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - PURPOSES.** The state board of higher education, in accordance with chapter 15-55, may issue and sell self-liquidating, tax-exempt bonds in an amount not exceeding \$2,000,000, for the purpose of constructing an addition to and remodeling

of the student union at Dickinson state university for the biennium beginning July 1, 1995, and ending June 30, 1997. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

**SECTION 11. USE OF PROCEEDS - APPROPRIATION.** The proceeds resulting from the sale of bonds authorized under section 10, or so much of the sum as may be necessary, plus any available funds received from federal or private sources, are hereby appropriated for the purpose of constructing an addition to and remodeling of the student union at Dickinson state university and providing equipment for the facility for the biennium beginning July 1, 1995, and ending June 30, 1997. Any unexpended balance from the sale of bonds must be placed in sinking funds for the retirement of the authorized bonds.

**SECTION 12. LEGISLATIVE INTENT - HASTINGS HALL PURCHASE.** It is the intent of the legislative assembly that North Dakota state university enter into an agreement to purchase the Hastings hall facility from the state seed department for \$350,000 for the biennium beginning July 1, 1995, and ending June 30, 1997. The source of funds used to purchase the facility is to be determined by North Dakota state university.

**SECTION 13. VALLEY CITY STATE UNIVERSITY - APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$150,000, or so much of the sum as may be necessary, to Valley City state university, for the purpose of defraying its expenses resulting from lower than estimated 1993-95 revenue collections, for the period beginning with the effective date of this Act and ending June 30, 1997.

**SECTION 14. AMENDMENT.** Section 15-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-12. Board may accept gifts and bequests - State treasurer to have custody of school funds.** The state board of higher education may, subject to the limitations of section 15-10-12.1, receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury and all institutional income ~~and institutional collections of public funds of each institution, except institutional funds received as donations, gifts, grants, and bequests, from tuition collections~~ must be placed in the special fund for the use of the institution for which the money was raised. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund are subject to legislative appropriations. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue

fund and state general fund are prepared and submitted to the office of the budget pursuant to section 15-10-15. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution, except that at the close of the biennium the balance of funds not paid from the general fund appropriation must be deposited in the special revenue funds of the institutions. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

**SECTION 15. EMERGENCY.** Section 13 of this Act is declared to be an emergency measure.

Approved April 17, 1995

Filed April 18, 1995

**CHAPTER 4****HOUSE BILL NO. 1004**  
(Appropriations Committee)**UPPER GREAT PLAINS TRANSPORTATION  
INSTITUTE**

AN ACT making an appropriation for defraying the expenses of the upper great plains transportation institute.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the upper great plains transportation institute for the purpose of defraying the expenses of the upper great plains transportation institute, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$1,701,697
Operating expenses	1,310,664
Equipment	45,000
Grants	<u>1,350,000</u>
Total all funds	\$4,407,361
Less estimated income	<u>4,000,650</u>
Total general fund appropriation	\$ 406,711

**SECTION 2. ADDITIONAL INCOME - APPROPRIATION.** Any additional income including funds from the federal government and gifts and donations from private sources received by the upper great plains transportation institute except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation.

**SECTION 3. TRANSFER AUTHORITY.** The state board of higher education is authorized to approve the transfer of funds between line items in section 1 of this Act, and shall notify the office of management and budget within ten days following the transfer.

Approved March 31, 1995  
Filed March 31, 1995

**CHAPTER 5****HOUSE BILL NO. 1005**

(Appropriations Committee)

**EXTENSION SERVICE, CROPS INSTITUTE, AND  
EXPERIMENT STATIONS**

AN ACT making an appropriation for defraying the expenses of the North Dakota state university extension service, the northern crops institute, and the North Dakota agricultural experiment station; to provide for a study of the agricultural experiment station and North Dakota state university extension service; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the North Dakota state university extension service, the northern crops institute, and the North Dakota agricultural experiment station for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.****NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE**

Salaries and wages	\$18,949,731
Operating expenses	3,330,300
Equipment	<u>425,000</u>
Total all funds	\$22,705,031
Less estimated income	<u>12,479,180</u>
Total general fund appropriation	\$10,225,851

**Subdivision 2.****NORTHERN CROPS INSTITUTE**

Salaries and wages	\$ 732,131
Operating expenses	116,350
Equipment	72,450
Capital improvements	<u>1,500,000</u>
Total all funds	\$ 2,420,931
Less estimated income	<u>1,817,557</u>
Total general fund appropriation	\$ 603,374

**Subdivision 3.****MAIN RESEARCH STATION**

Salaries and wages	\$32,428,292
Operating expenses	4,353,080
Equipment	1,357,746
Capital improvements	698,800
Animal replacement	<u>300,000</u>
Total all funds	\$39,137,918
Less estimated income	<u>16,872,346</u>
Total general fund appropriation	\$22,265,572

## Subdivision 4.

## DICKINSON RESEARCH CENTER

Salaries and wages	\$ 1,013,771
Operating expenses	434,803
Equipment	114,076
Animal replacement	100,000
Total all funds	\$ 1,662,650
Less estimated income	531,676
Total general fund appropriation	\$ 1,130,974

## Subdivision 5.

## CENTRAL GRASSLANDS RESEARCH CENTER

Salaries and wages	\$ 454,268
Operating expenses	371,143
Equipment	75,193
Animal replacement	100,000
Total all funds	\$ 1,000,604
Less estimated income	451,400
Total general fund appropriation	\$ 549,204

## Subdivision 6.

## HETTINGER RESEARCH CENTER

Salaries and wages	\$ 506,413
Operating expenses	194,127
Equipment	72,600
Animal replacement	100,000
Total all funds	\$ 873,140
Less estimated income	300,939
Total general fund appropriation	\$ 572,201

## Subdivision 7.

## LANGDON RESEARCH CENTER

Salaries and wages	\$ 565,414
Operating expenses	169,602
Equipment	42,800
Total all funds	\$ 777,816
Less estimated income	174,342
Total general fund appropriation	\$ 603,474

## Subdivision 8.

## NORTH CENTRAL RESEARCH CENTER

Salaries and wages	\$ 454,927
Operating expenses	240,703
Equipment	116,200
Capital Improvements	600,000
Total all funds	\$ 1,411,830
Less estimated income	629,100
Total general fund appropriation	\$ 782,730

## Subdivision 9.

## WILLISTON RESEARCH CENTER

Salaries and wages	\$ 679,379
Operating expenses	284,932
Equipment	63,900
Total all funds	\$ 1,028,211

Less estimated income	349,825
Total general fund appropriation	\$ 678,386

## Subdivision 10.

**CARRINGTON RESEARCH CENTER**

Salaries and wages	\$ 1,233,584
Operating expenses	574,212
Equipment	106,250
Animal replacement	100,000
Total all funds	\$ 2,014,046
Less estimated income	1,067,398
Total general fund appropriation	\$ 946,648

## Subdivision 11.

**AGRONOMY SEED FARM**

Salaries and wages	\$ 284,785
Operating expenses	389,700
Equipment	172,000
Capital improvements	220,000
Total special funds appropriation	\$ 1,066,485

## Subdivision 12.

**LAND RECLAMATION RESEARCH CENTER**

Salaries and wages	\$ 967,600
Operating expenses	80,000
Equipment	20,000
Total special funds appropriation	\$ 1,067,600
Grand total general fund appropriation H.B. 1005	\$38,358,414
Grand total special funds appropriation H.B. 1005	\$36,887,848
Grand total all funds appropriation H.B. 1005	\$75,246,262

**SECTION 2. ADDITIONAL INCOME - APPROPRIATION.** Any additional income including funds from the federal government and gifts and donations from private sources received by the North Dakota agricultural experiment station, northern crops institute, and the North Dakota state university extension service, except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation. All of the moneys in the operating fund must remain in the fund until expended pursuant to any specific legislative appropriation or an authorization from the emergency commission, and the balances of the moneys except those received from the federal government or as gifts from private sources, must be used to reduce the amount of moneys to be expended pursuant to the general fund appropriation only to the extent that the unencumbered balance in the operating fund on June 31, 1995, exceeds the estimated income for the biennium ending June 31, 1997.

**SECTION 3. TRANSFER AUTHORITY.** The state board of higher education is authorized to approve transfer of funds between line items for each agency included in section 1 of this Act and shall notify the office of management and budget within ten days following the transfer.

**SECTION 4. TRANSFER AUTHORITY.** Upon approval of the state board of higher education and the emergency commission, the director of the North Dakota agricultural experiment station may transfer appropriation authority between agencies included in subdivisions 2 through 12 of section 1 of this Act.



**SECTION 5. STORAGE FACILITIES.** Structures for storage of agricultural products or equipment may be authorized for construction by the state board of higher education provided the structures do not exceed \$75,000 in cost.

**SECTION 6. LEGISLATIVE INTENT - SEPARATE BUDGETS.** It is the intent of the legislative assembly that funds appropriated in this Act not be commingled with the funds appropriated to North Dakota state university in House Bill No. 1003 for the biennium beginning July 1, 1995, and ending June 31, 1997. Further, it is the intent of the legislative assembly that appropriation requests to defray the expenses of the North Dakota state university extension service, the northern crops institute, and the entities of the North Dakota agricultural experiment station for the 1997-99 biennium be separate from the appropriation request for funding the higher education institutions under the control of the board of higher education.

**SECTION 7. INTENT.** It is the intent of the legislative assembly that the North Dakota state university extension service put special emphasis on maintaining and promoting its 4-H programs for youth for the biennium beginning July 1, 1995, and ending June 31, 1997.

**SECTION 8. APPROPRIATION.** There is hereby appropriated from special funds derived from federal funds or other income, the sum of \$80,000, or so much of the sum as may be necessary, to the agricultural experiment station for the purpose of conducting cereal grain disease research and potato breeding research to meet the needs of North Dakota agriculture for the period beginning with the effective date of this Act and ending June 31, 1997.

**SECTION 9. LINE ITEM TRANSFERS - EMERGENCY COMMISSION.** Notwithstanding any other provision of law, the emergency commission may authorize the entities in subdivisions 4 through 12 of section 1 of this Act to establish a capital improvements line item and to transfer appropriation authority from another line item within the same subdivision to the capital improvements line item for the biennium beginning July 1, 1995, and ending June 31, 1997.

**SECTION 10. LEGISLATIVE INTENT - PART-TIME LABOR.** It is the intent of the legislative assembly that the board of higher education may authorize transfers for the entities of the agricultural experiment station of up to five percent of a capital improvements line item to salaries and wages for part-time labor costs relating to repairs, maintenance, and improvements at the branch research centers for the biennium beginning July 1, 1995, and ending June 31, 1997.

**SECTION 11. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 1995-96 interim, the services provided by the North Dakota state university extension service and the agricultural experiment station, the degree of duplication, their cost and effectiveness, the necessity for their continued existence, and options for consolidation.

**SECTION 12. EMERGENCY.** Section 8 of this Act is declared to be an emergency measure.

Approved April 12, 1995  
Filed April 13, 1995

**CHAPTER 6****HOUSE BILL NO. 1006**

(Appropriations Committee)

**HEALTH AND CONSOLIDATED LABORATORIES**

AN ACT to provide an appropriation for defraying the expenses of the state department of health and consolidated laboratories and to provide for a study of the licensing of home health care providers.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state department of health and consolidated laboratories for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$23,298,664
Operating expenses	31,384,002
Equipment	847,000
Capital improvements	28,143
Grants	15,489,722
Abandoned motor vehicle	175,000
Physician loan program	100,000
Total all funds	\$71,322,531
Less estimated income	56,292,698
Total general fund appropriation	\$15,029,833

**SECTION 2. ABANDONED MOTOR VEHICLE DISPOSAL FUND.** The estimated income line item included in section 1 of this Act includes \$175,000, or so much of the sum as may be necessary, to be made available to the state department of health and consolidated laboratories from the abandoned motor vehicle disposal fund, under section 39-26-11 for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. SOLID WASTE MANAGEMENT FUND.** The estimated income line item included in section 1 of this Act includes \$1,200,000, or so much of the sum as may be necessary, to be made available to the state department of health and consolidated laboratories from the solid waste management fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 4. ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item included in section 1 of this Act includes \$200,000, or so much of the sum as may be necessary, to be made available to the state department of health and consolidated laboratories from the environment and rangeland protection fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. DOMESTIC VIOLENCE FUND.** The estimated income line item included in section 1 of this Act includes \$300,000, or so much of the sum as

may be necessary, to be made available to the state department of health and consolidated laboratories from the domestic violence fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 6. LEGISLATIVE COUNCIL INTERIM STUDY OF HOME HEALTH CARE LICENSING.** The legislative council shall consider studying the licensing of home health care providers during the 1995-96 interim. If conducted, the study must include a determination of the appropriate agency or entity to be responsible for the licensing of home health care providers.

Approved April 17, 1995

Filed April 18, 1995

**CHAPTER 7****HOUSE BILL NO. 1007**

(Appropriations Committee)

**INDIAN AFFAIRS COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the Indian affairs commission.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the Indian affairs commission for the purpose of defraying the expenses of the Indian affairs commission, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$195,099
Operating expenses	31,884
Equipment	1,000
Grants	<u>150,000</u>
Total general fund appropriation	<u>\$377,983</u>

**SECTION 2. ALCOHOL AND DRUG EDUCATION PROGRAM - EXPENDITURE - LIMITATIONS.** The moneys appropriated in the grants line item in section 1 of this Act for the Native American alcohol and drug abuse education program may not be spent for the services provided by the tribes to administer the program. The local grant recipient is required to provide match equal to the grant amount with funding or in-kind service.

Approved April 17, 1995

Filed April 18, 1995

**CHAPTER 8****HOUSE BILL NO. 1008**

(Appropriations Committee)

**AERONAUTICS COMMISSION**

AN ACT making an appropriation for defraying the expenses of the aeronautics commission.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the aeronautics commission for the purpose of defraying the expenses of the aeronautics commission, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$ 442,793
Operating expenses	660,451
Equipment	68,500
Capital improvements	160,000
Grants	<u>2,191,901</u>
Total all funds	\$3,523,645
Less estimated income	<u>3,020,220</u>
Total general fund appropriation	\$ 503,425

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 9

### HOUSE BILL NO. 1009

(Appropriations Committee)

## VETERANS' HOME AND DEPARTMENT OF VETERANS' AFFAIRS

AN ACT to provide an appropriation for defraying the expenses of the veterans' home and the department of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home and the department of veterans' affairs for the purpose of defraying their expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

#### Subdivision 1.

#### VETERANS' HOME

Salaries and wages	\$4,297,842
Operating expenses	1,465,620
Equipment	92,500
Capital improvements	1,054,801
Total all funds	\$6,910,763
Less estimated income	4,938,840
Total general fund appropriation	\$1,971,923

#### Subdivision 2.

#### VETERANS' AFFAIRS

Salaries and wages	\$ 390,670
Operating expenses	102,731
Grants	100,000
Total all funds	\$ 593,401
Less estimated income	177,594
Total general fund appropriation	\$ 415,807
Grand total general fund appropriation H.B. 1009	\$2,387,730
Grand total special funds appropriation H.B. 1009	\$5,116,434
Grand total all funds appropriation H.B. 1009	\$7,504,164

**SECTION 2. APPROPRIATION.** The estimated income line item included in subdivision 1 of this Act includes \$45,000, or so much of the sum as may be necessary, to be made available to the veterans' home operating fund from the veterans' home improvement fund.

**SECTION 3. VETERANS' POSTWAR TRUST FUND - TRANSFER.** The estimated income line item included in subdivision 2 of section 1 of this Act includes \$177,594, or so much of the sum as may be necessary, to be transferred to the department of veterans affairs as requested from the interest earnings of the veterans' postwar trust fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

Approved April 11, 1995

Filed April 12, 1995

**CHAPTER 10****HOUSE BILL NO. 1010**

(Appropriations Committee)

**BANKING AND FINANCIAL INSTITUTIONS**

AN ACT to provide an appropriation for defraying the expenses of the department of banking and financial institutions.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, to the department of banking and financial institutions for the purpose of defraying the expenses of the department of banking and financial institutions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$2,274,425
Operating expenses	480,751
Equipment	21,494
Contingency - banking and financial institutions	<u>50,000</u>
Total appropriation from the financial institutions regulatory fund	\$2,826,670

Approved March 31, 1995

Filed March 31, 1995



**CHAPTER 11****HOUSE BILL NO. 1011**  
(Appropriations Committee)**STATE FAIR ASSOCIATION**

**AN ACT** to provide an appropriation for defraying the expenses of the state fair association.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Capital improvements	\$210,000
Premiums	<u>288,800</u>
Total general fund appropriation	\$498,800

Approved March 31, 1995

Filed April 3, 1995

**CHAPTER 12****HOUSE BILL NO. 1012**  
(Appropriations Committee)**COUNCIL ON THE ARTS**

**AN ACT** to provide an appropriation for defraying the expenses of the council on the arts and an appropriation of funds from the cultural endowment fund.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts for the purpose of defraying the expenses of the council on the arts, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$ 378,526
Operating expenses	207,370
Equipment	1,360
Grants	<u>1,505,440</u>
Total all funds	\$2,092,696
Less estimated income	<u>1,516,078</u>
Total general fund appropriation	\$ 576,618

**SECTION 2. APPROPRIATION.** All income from the cultural endowment fund is hereby appropriated for the furthering of the cultural arts in the state for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. ADDITIONAL INCOME.** All income of the council on the arts in excess of the estimated income appropriated in section 1 of this Act is hereby appropriated to the council on the arts for the biennium beginning July 1, 1995, and ending June 30, 1997, and may be spent only upon authorization of the emergency commission.

Approved March 27, 1995  
Filed March 28, 1995

**CHAPTER 13**  
**HOUSE BILL NO. 1013**  
(Appropriations Committee)

**HIGHWAY PATROL**

AN ACT to provide an appropriation for defraying the expenses of the highway patrol; to establish a law enforcement training academy fee and provide for its collection and distribution; to authorize the industrial commission to issue and sell evidences of indebtedness for capital projects; to amend and reenact section 39-26-12 of the North Dakota Century Code, relating to the abandoned motor vehicle disposal fund; to provide an appropriation to the industrial commission for the retirement of the evidences of indebtedness; to provide an effective date; to provide for application; and to provide an expiration date.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from federal funds and other income, to the highway patrol for the purpose of defraying its expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Administration	\$ 1,639,115
Field operations	18,264,623
Law enforcement training academy	785,888
Total special funds appropriation	<u>\$20,689,626</u>

**SECTION 2. SPECIAL FUNDS TRANSFER.** The total special funds appropriation line item in section 1 of this Act includes the sum of \$19,573,626, or so much of the sum as may be necessary, from the state highway fund that may be transferred at the direction of the superintendent of the highway patrol for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. PAYMENTS TO HIGHWAY PATROL OFFICERS.** Each patrol officer of the state highway patrol shall receive from funds appropriated in the field operations line item in section 1 of this Act an amount not to exceed one hundred twenty dollars per month for the biennium beginning July 1, 1995, and ending June 30, 1997. Such payments are in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. Such amounts must be paid without the presentation of receipts or other memorandums at the time and in the same manner as salaries of members of the highway patrol are paid.

**SECTION 4. LINE ITEM TRANSFERS.** Upon approval of the emergency commission, the highway patrol may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

**SECTION 5. LAW ENFORCEMENT TRAINING ACADEMY FEE - COLLECTION.** In addition to any other registration fee, a law enforcement training academy fee of two dollars is imposed on a passenger motor vehicle, a house car, and a truck weighing twelve thousand pounds or under that is subject to registration under title 39. The fee is payable when the registration under title 39 is payable. Each month the director of the department of transportation shall transfer to the highway fund the law enforcement training academy fees collected in accordance with this Act.

**SECTION 6. PROJECT AUTHORIZATION - APPROPRIATION.** The industrial commission, acting as the state building authority, shall arrange for the funding of the project authorized in this section, hereby declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, during the biennium beginning July 1, 1995, and ending June 30, 1997. There is hereby appropriated the proceeds of the evidences of indebtedness and other available funds, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the highway patrol for the purpose of constructing and furnishing a building addition to the law enforcement training academy, to be used for law enforcement training, for the biennium beginning July 1, 1995, and ending June 30, 1997.

The industrial commission shall issue evidences of indebtedness authorized under this section with the condition that lease rental payments need not begin until July 1, 1996, and must end by June 30, 1997. This authority of the industrial commission to issue evidences of indebtedness ends on June 30, 1997, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date. Any unexpended balances from the sale of evidences of indebtedness must be placed in a sinking fund for the retirement of authorized evidences of indebtedness.

**SECTION 7. APPROPRIATION - INDUSTRIAL COMMISSION.** There is hereby appropriated out of any moneys in the highway fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, which may be spent at the direction of the industrial commission, for the purpose of retiring evidences of indebtedness issued for constructing and furnishing a law enforcement training academy building addition for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 8. AMENDMENT.** Section 39-26-12 of the North Dakota Century Code is amended and reenacted as follows:

**39-26-12. Tax on initial motor vehicle certificates of title - When tax is suspended.** There is hereby imposed a tax of two dollars on each initial North Dakota certificate of title issued to a passenger motor vehicle or a truck motor vehicle. The proceeds of such tax must be paid into the abandoned motor vehicle disposal fund in the state treasury. No registration plates or title certificate may be issued unless such tax is paid. Expenses of the fund arising from the provisions of this chapter must be paid from the fund within the limits of legislative appropriation. If on the first day of July in any year the amount of uncommitted money in the abandoned motor vehicle disposal fund is five two hundred fifty thousand dollars or more, the tax must be suspended and the amount in excess of five two hundred fifty thousand dollars must be transferred to the highway fund. If the tax has been suspended and on the first day of July in any year the amount of uncommitted money in the abandoned motor vehicle disposal fund is one hundred thousand

dollars or less the tax must be reimposed on and after January first of the succeeding year.

**SECTION 9. EFFECTIVE DATE.** Section 8 of this Act becomes effective on July 1, 1996.

**SECTION 10. APPLICATION OF ACT.** Section 5 of this Act applies to vehicle registration periods beginning after December 31, 1995. A vehicle registration period begins on the first day of the month in which the vehicle becomes subject to registration in this state.

**SECTION 11. EXPIRATION DATE.** Section 5 of this Act is effective through December 31, 1996, and after that date is ineffective.

Approved April 17, 1995  
Filed April 18, 1995

**CHAPTER 14****HOUSE BILL NO. 1014**  
(Appropriations Committee)**DEPARTMENT OF TRANSPORTATION**

AN ACT making an appropriation for defraying the expenses of the various divisions under the supervision of the director of the department of transportation; and to create and enact a new section to chapter 49-17.1 of the North Dakota Century Code, relating to local rail projects not eligible for federal funds.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the department of transportation for the purpose of defraying its expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Administration	\$ 34,081,243
Motor vehicle	6,057,097
Driver's license	12,396,125
Highways	349,164,404
Fleet services	<u>28,408,218</u>
Total all funds	<u>\$430,107,087</u>

**SECTION 2. LINE ITEM TRANSFERS.** Upon approval of the emergency commission, the director of the department of transportation may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

**SECTION 3.** A new section to chapter 49-17.1 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

**Department may authorize local rail projects.** For the purpose of promoting the public interest and local economic development, the department may utilize revenue generated under this chapter for the construction or improvement of railway freight transportation projects not otherwise eligible for assistance under the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.] and which meet standards and specifications developed by the department.

Approved April 11, 1995  
Filed April 12, 1995

**CHAPTER 15****HOUSE BILL NO. 1015**

(Appropriations Committee)

**COMMISSIONER OF UNIVERSITY AND SCHOOL  
LANDS**

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from the state lands maintenance fund and the lands and minerals trust fund in the state treasury, not otherwise appropriated, and other income to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Asset management	\$2,424,653
Energy development impact office	<u>4,995,467</u>
Total special funds	\$7,420,120

**SECTION 2. OIL AND GAS IMPACT GRANT FUND.** The amount of \$4,995,467, or so much of the amount as may be necessary, included in the total special funds appropriated in section 1 of this Act may be spent from the oil and gas impact grant fund by the commissioner of university and school lands for the purpose of providing oil and gas development impact grants and the administration of the oil and gas development impact grant program for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. GRANTS.** Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 1 of this Act nor to the appropriation for coal impact grants in chapter 733 of the 1989 Session Laws.

**SECTION 4. LINE ITEM TRANSFERS.** Upon approval of the emergency commission, the commissioner of university and school lands may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 16****HOUSE BILL NO. 1016**

(Appropriations Committee)

**CHILDREN'S SERVICES COORDINATING COMMITTEE**

AN ACT making an appropriation for defraying the expenses of the children's services coordinating committee.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the children's services coordinating committee for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$ 56,985
Operating expenses	64,020
Equipment	3,000
Grants	<u>3,550,000</u>
Total all funds	\$3,674,005
Less estimated income	<u>3,600,000</u>
Total general fund appropriation	\$ 74,005

**SECTION 2. GRANTS.** Of the \$3,550,000 appropriated in the grants line item in section 1 of this Act, the children's services coordinating committee shall provide, to each of the twelve regional and tribal children's services coordinating committees, no less than eighty-five percent of the funds generated by each committee's refinancing activities.

**SECTION 3. ADDITIONAL INCOME.** All income of the children's services coordinating committee in excess of the estimated income line item appropriated in section 1 of this Act is hereby appropriated to the children's services coordinating committee for the biennium beginning July 1, 1995, and ending June 30, 1997, and may be spent only upon authorization of the emergency commission.

**SECTION 4. STATE AUDITOR PERFORMANCE REVIEW.** The state auditor shall conduct a performance review of the children's services coordinating committee during the period beginning July 1, 1995, and ending September 30, 1996, and shall present the final report, including findings and recommendations, to the budget section at its December 1996 meeting.



**SECTION 5. LEGISLATIVE INTENT - FUNCTION OF REGIONAL AND TRIBAL CHILDREN'S SERVICES COORDINATING COMMITTEES.** It is the intent of the legislative assembly that each regional and tribal children's services coordinating committee function as a regional planning committee to monitor and coordinate children's services in each region and that the regional and tribal children's services coordinating committees do not directly provide services or programs unless the services or programs were being provided on January 1, 1995, for the biennium beginning July 1, 1995, and ending June 30, 1997. It is further the intent that any committee directly providing services or programs on January 1, 1995, discontinue directly providing those services or programs by June 30, 1997.

Approved April 11, 1995

Filed April 12, 1995

**CHAPTER 17****HOUSE BILL NO. 1017**

(Appropriations Committee)

**INDUSTRIAL COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission; to authorize transfers; to amend and reenact subsection 2 of section 57-61-01.5 of the North Dakota Century Code, relating to deposits in the lignite research fund; to repeal section 14 of chapter 38 of the 1993 Session Laws, relating to transfers from the Bank of North Dakota; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.****INDUSTRIAL COMMISSION**

Salaries and wages	\$ 4,635,147
Operating expenses	1,495,513
Equipment	47,000
Administrative contingency	10,000
Bond payments	15,161,555
Lignite research grants	<u>13,996,086</u>
Total all funds	\$ 35,345,301
Less estimated income	<u>16,486,115</u>
Total general fund appropriation	\$ 18,859,186

**Subdivision 2.****BANK OF NORTH DAKOTA - OPERATIONS**

Salaries and wages	\$ 12,092,826
Operating expenses	9,945,307
Equipment	614,700
Capital improvements	205,000
Contingency	<u>800,000</u>
Total appropriation from Bank of North Dakota fund	\$ 23,657,833

**Subdivision 3.****BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT**

Partnership in assisting community expansion fund	\$ 4,500,000
Agriculture partnership in assisting community expansion fund	380,000
Beginning farmer	<u>950,000</u>
Total general fund appropriation	\$ 5,830,000

**Subdivision 4.**

**MILL AND ELEVATOR ASSOCIATION**

Salaries and wages	\$ 10,765,469
Operating expenses	6,544,298
Contingency	250,000
Agriculture promotion	50,000
Total appropriation from mill and elevator fund	\$ 17,609,767

**Subdivision 5.****HOUSING FINANCE AGENCY**

Salaries and wages	\$ 2,252,671
Operating expenses	602,937
Equipment	75,000
Grants	19,716,827
Contingency	100,000
Total appropriation from housing finance agency fund	\$ 22,747,435
Grand total general fund appropriation H.B. 1017	\$ 24,689,186
Grand total special funds appropriation H.B. 1017	\$ 80,501,150
Grand total all funds appropriation H.B. 1017	\$105,190,336

**SECTION 2. APPROPRIATION.** In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 1 of this Act, there is hereby appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. APPROPRIATION.** In addition to the amount appropriated to the industrial commission in subdivision 1 of section 1 of this Act, there is hereby appropriated, with the approval of the emergency commission, funds which may become available to the commission from bonds authorized by law to be issued by the industrial commission under chapters 4-36 and 54-17.2 and section 54-17-25, for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 4. TRANSFER.** The sum of \$57,958, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the North Dakota mill and elevator association. The moneys must be transferred during the biennium beginning July 1, 1995, and ending June 30, 1997, upon order of the industrial commission.

**SECTION 5. TRANSFER.** The sum of \$75,598, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred during the biennium beginning July 1, 1995, and ending June 30, 1997, upon order of the industrial commission.

**SECTION 6. TRANSFER.** The sum of \$50,399, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the housing finance agency fund. The moneys must be transferred during the biennium beginning July 1, 1995, and ending June 30, 1997, upon order of the industrial commission.

**SECTION 7. TRANSFER.** The sum of \$178,640, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, of which \$17,640 is from the revenues of the municipal bond bank and \$161,000 to the extent available is from reserves of the municipal bond bank. The available moneys must be transferred during the

biennium beginning July 1, 1995, and ending June 30, 1997, upon order of the industrial commission.

#### **SECTION 8. INCOME AUTHORIZATION - STUDENT LOAN TRUST.**

There is hereby authorized the receipt of fees by the industrial commission in the sum of \$50,399, or so much of the sum as is owed, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, from the student loan trust for administrative services rendered by the industrial commission to the extent permitted by sections 54-17-24 and 54-17-25. The fees must be received during the biennium beginning July 1, 1995, and ending June 30, 1997, upon order of the industrial commission.

**SECTION 9. TRANSFER.** The industrial commission shall transfer to the general fund in the state treasury, the sum of \$1,000,000 from the North Dakota mill and elevator association. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 10. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY.** The amount of \$400,000, or so much of the amount as may be necessary, included in the grants and special funds appropriation line items in subdivision 1 of section 1 of this Act, is from the lignite research fund for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and jobs or that will lead to increased development of lignite and its products and create new jobs and economic growth for the general welfare of this state. Moneys appropriated pursuant to this section may also be used for the purpose of contracting for nonmatching externality studies and activities for the lignite industry and the state in externality proceedings. Moneys not needed for the purposes stated herein are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

**SECTION 11. LEGISLATIVE INTENT - LEASE PAYMENTS.** The amount of \$15,161,555 included in subdivision 1 of section 1 of this Act in the bond payments line item must be paid from the following funding sources during the biennium beginning July 1, 1995, and ending June 30, 1997:

Higher education institutions	\$ 461,250
General fund	13,823,402
Job service North Dakota	375,564
Federal portion for southeast human service center	234,438
Veterans' home improvement fund	<u>266,901</u>
Total	\$15,161,555

**SECTION 12. TRANSFERS.** During the period of time beginning with the effective date of this Act and ending June 30, 1997, the industrial commission shall transfer to the state general fund up to \$31,900,000, an amount equivalent to the transfers not made but authorized by the fifty-third legislative assembly, and \$24,000,000 for the period beginning July 1, 1995, and ending June 30, 1997, from the earnings and accumulated and undivided profits of the Bank of North Dakota. The moneys shall be transferred in amounts and at such times as requested by the director of the office of management and budget.

If, by April 1, 1997, the director of the office of management and budget determines that a transfer is necessary for a July 1, 1997, general fund balance of \$10,000,000, an additional transfer of up to \$4,000,000 of earnings and accumulated and undivided profits at the request of the director of the office of management and budget shall be made to the general fund.

No transfers may be made that would reduce the Bank's capital structure below \$76,000,000.

If the revised projection for the July 1, 1997, general fund balance estimated by the director of the office of management and budget in November 1996 is \$30,000,000 or more, the Bank of North Dakota shall suspend such transfers to the general fund until the Bank's capital structure is \$100,000,000.

### **SECTION 13. NORTH DAKOTA REAL ESTATE TRUST - DEFICIT.**

There is hereby authorized a transfer to the North Dakota real estate trust, from the Bank of North Dakota, the sum necessary to fund the deficit in the trust as of June 30, 1995. The moneys must be transferred during the biennium beginning July 1, 1995, and ending June 30, 1997. This legislation is expressly intended to prevent the Bank from presenting any bond and uncertificated obligations to the state treasurer for payment. However, it is understood that the Bank may recover any previous, current, and future transfers to the trust from the net assets of the trust as they may become available.

**SECTION 14. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LAND RECLAMATION RESEARCH.** The amount of \$290,000, or so much as is necessary, of subdivision 1 of section 1 of this Act, is to be spent from the lignite research fund for the purpose of supporting independent, nonmatching lignite reclamation research activities, projects, or processes that will reduce unnecessary and duplicative regulatory costs that do not contribute to cost-effective reclamation practices. Moneys not needed for the purposes stated herein are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

**SECTION 15. APPROPRIATION - TRANSFER.** The funds appropriated by subdivision 3 of section 1 of this Act must be transferred by the Bank of North Dakota to the partnership in assisting community expansion fund established by section 6-09.14-02; the agricultural partnership in assisting community expansion fund established by section 6-09.13-04; and the beginning farmer loan fund established by section 6-09-15.5, in the amounts set out in that subdivision. The Bank of North Dakota may not be construed to be a general fund agency because of the appropriation made by subdivision 3 of section 1 of this Act.

**SECTION 16. AMENDMENT.** Subsection 2 of section 57-61-01.5 of the North Dakota Century Code is amended and reenacted as follows:

2. The state treasurer shall deposit in the lignite research fund, ~~forty seven~~ fifty seven percent of the taxes collected and deposited subsequent to July 1, ~~1990~~ 1994, in the permanent trust fund established by section 21 of article X of the Constitution of North Dakota and shall, beginning in July 1991, no less than monthly, deposit in the lignite research fund ~~forty seven~~ fifty seven percent of the taxes collected and deposited in the permanent trust fund. All moneys in the lignite research fund as well as any moneys received from federal and private sources for lignite research, development, and marketing, including interest on all such moneys, are hereby

appropriated to the industrial commission, and may be spent only within limits of legislative appropriations, for the administration, development, and funding of the lignite research, development, and marketing program.

**SECTION 17. REPEAL.** Section 14 of chapter 38 of the 1993 Session Laws is repealed.

**SECTION 18. EMERGENCY.** Sections 12 and 17 of this Act are declared to be emergency measures.

Approved April 5, 1995

Filed April 5, 1995

**CHAPTER 18****HOUSE BILL NO. 1018**  
(Appropriations Committee)**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

AN ACT making an appropriation for defraying the expenses of the department of corrections and rehabilitation; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of corrections and rehabilitation for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.****CENTRAL OFFICE**

Salaries and wages	\$ 535,863
Operating expenses	61,349
Equipment	5,000
Total all funds	\$ 602,212
Less estimated income	50,000
Total general fund appropriation	\$ 552,212

**Subdivision 2.****COMMUNITY SERVICES**

Salaries and wages	\$ 1,963,655
Operating expenses	3,636,279
Equipment	6,000
Grants	1,200,000
Total all funds	\$ 6,805,934
Less estimated income	3,589,861
Total general fund appropriation	\$ 3,216,073

**Subdivision 3.****INDUSTRIAL SCHOOL**

Salaries and wages	\$ 6,141,310
Operating expenses	1,337,886
Equipment	80,479
Capital improvements	598,321
Institutional medical fees	100,000
Total all funds	\$ 8,257,996
Less estimated income	2,192,020
Total general fund appropriation	\$ 6,065,976

**Subdivision 4.****STATE PENITENTIARY**

Salaries and wages	\$13,765,642
Operating expenses	6,274,605
Equipment	60,300
Capital improvements	550,700
Institutional medical fees	700,000
Total all funds	<u>\$21,351,247</u>
Less estimated income	<u>2,778,864</u>
Total general fund appropriation	\$18,572,383

## Subdivision 5.

## ROUGH RIDER INDUSTRIES

Salaries and wages	\$ 1,804,199
Operating expenses	4,779,573
Equipment	221,000
Capital improvements	50,000
Total special funds	<u>\$ 6,854,772</u>

## Subdivision 6.

## PAROLE AND PROBATION

Victim services	\$ 1,682,291
Institutional offender services	365,338
Community offender services	4,971,693
Total all funds	<u>\$ 7,019,322</u>
Less estimated income	<u>3,008,600</u>
Total general fund appropriation	\$ 4,010,722
Grand total general fund appropriation H.B. 1018	\$32,587,366
Grand total special funds appropriation H.B. 1018	\$18,474,117
Grand total all funds appropriation H.B. 1018	\$51,061,483

**SECTION 2. TRANSFER AUTHORITY.** Upon approval of the budget section, the director of the department of corrections and rehabilitation may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

**SECTION 3. LINE ITEM TRANSFERS.** Upon approval of the emergency commission, the department of corrections and rehabilitation may transfer between various line items in subdivision 6 of section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

**SECTION 4. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$170,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of defraying the expenses of the state industrial school, for the period beginning January 1, 1995, and ending June 30, 1995.

**SECTION 5. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure.

Approved April 5, 1995  
Filed April 5, 1995



**CHAPTER 19****HOUSE BILL NO. 1019**  
(Appropriations Committee)**JOB SERVICE NORTH DAKOTA**

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; to amend and reenact subsection 11 of section 1 and section 2 of chapter 493 of the 1993 Session Laws, relating to the new jobs training program; to repeal section 6 of chapter 493 of the 1993 Session Laws, relating to the expiration date of the new jobs training program; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to job service North Dakota for the purpose of defraying its expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$32,873,476
Operating expenses	8,108,168
Equipment	445,000
Capital improvements	190,000
Grants	9,511,000
Work Force 2000	<u>1,500,000</u>
Total all funds	\$52,627,644
Less estimated income	<u>51,127,644</u>
Total general fund appropriation	\$ 1,500,000

**SECTION 2. APPROPRIATION.** All federal funds received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are hereby appropriated for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. TRUST FUND BALANCE.** The job insurance trust fund balance is to be maintained at a level of at least \$40,000,000. If the fund balance is ever projected to go below \$40,000,000, job service North Dakota shall notify the members of the budget section, and at the next meeting of the budget section job service is to present a report on the condition of the fund, the circumstances leading to the decrease in the fund balance, and a proposal on how to increase the fund balance back to the minimum balance of \$40,000,000.

**SECTION 4. ELECTRONIC REPORTING.** Job service North Dakota and the workers compensation bureau are to develop an employer wage reporting system that will allow for the electronic submission of employer wage information. The system is to have a common reporting form and allow for magnetic or electronic transmission of the wage information on either 5.25-inch or 3.5-inch DOS formatted diskettes, through asynchronous communications, or any other method of transmission deemed appropriate. The new reporting system is to be available to employers by January 1, 1997.

**SECTION 5. WORK FORCE 2000 ALLOCATIONS.** For the year beginning July 1, 1995, a minimum of \$125,000, of the \$1,500,000 provided for work force 2000, is to be available for projects in areas in the state which are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. Any work force 2000 funds remaining after June 30, 1996, may be used for projects in any area of the state.

**SECTION 6. AMENDMENT.** Subsection 11 of section 1 of chapter 493 of the 1993 Session Laws is amended and reenacted as follows:

11. "Primary sector business" means an employer engaged in locating to or in this state which previously had no presence in this state, or in expanding its operations within this state, which through the employment of knowledge or labor, adds value to a product, process, or export service that results in the creation of new wealth, excluding production agriculture, if it meets the following eligibility criteria:
  - a. An employer entering into an agreement, and increasing its base employment level by ~~ten percent, or two employees, whichever is greater,~~ at least one employee, or in the case of an employer without an established base employment level in this state creating ~~a minimum of at least~~ five employees, within the time set in the agreement, is entitled to the new jobs credit from withholding.
  - b. An employer must have an economically productive and socially desirable purpose within the state.
  - c. An employer must not be closing or reducing its operation in one area of the state and relocating substantially the same operation in another area.

**SECTION 7. AMENDMENT.** Section 2 of chapter 493 of the 1993 Session Laws is amended and reenacted as follows:

**SECTION 2. Job service North Dakota - Agreements.** Program services developed and coordinated by job service North Dakota must be provided to primary sector businesses found eligible for loans or grants under this Act. Job service North Dakota may enter into an agreement to establish a project with an employer which meets the following conditions:

1. Sets a date of commencement of the project.
2. Identifies program costs, including deferred costs, which are to be paid from available sources including new jobs credit from withholding to be received or derived from new jobs resulting from the project.
3. Provides for a guarantee by the employer of payment for program costs.
4. Provides that any deferral of program cost payments may not exceed ten years from the date of commencement of the project.
5. Provides that on-the-job training costs for employees may not exceed fifty percent of the annual gross payroll costs of the new jobs in the first full year after the date of commencement of the project. For purposes of this subsection, "gross payroll" is the gross wages and salaries for the new jobs.

6. Provides the maximum amount of new jobs credit from withholding, or tuition and fee payments, allowed for a project.
7. Provides that every employee participating in the new jobs training program must be paid an income of at least equal to one hundred twenty percent of the federal poverty level for a family of four as determined at the date of commencement of the project seven dollars and fifty cents per hour, plus benefits, by the end of the first year of employment under the project and for the remaining life of the loan.

A project requiring a loan from the department or a community may not be approved, and an agreement may not be executed by job service North Dakota, until notification from the department or community that the employer has qualified for a loan. Upon execution of the agreement, job service North Dakota shall notify the state tax commissioner of the agreement and the identity of the employer. Job service North Dakota may adopt rules to implement this Act. Job service North Dakota shall prepare an annual report for the governor and the legislative assembly with respect to the new jobs training program.

**SECTION 8. REPEAL.** Section 6 of chapter 493 of the 1993 Session Laws is repealed.

**SECTION 9. EMERGENCY.** Section 8 of this Act is declared to be an emergency measure.

Approved April 17, 1995  
Filed April 18, 1995

**CHAPTER 20****HOUSE BILL NO. 1020**  
(Appropriations Committee)**OFFICE OF ADMINISTRATIVE HEARINGS**

AN ACT making an appropriation for defraying the expenses of the office of administrative hearings.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from billing agencies for services, to the office of administrative hearings for the purpose of defraying its expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$461,078
Operating expenses	129,342
Equipment	9,015
Total all funds	<u>\$599,435</u>
Less estimated income	<u>374,962</u>
Total general fund appropriation	<u>\$224,473</u>

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 21****HOUSE BILL NO. 1021**

(Appropriations Committee)

**ECONOMIC DEVELOPMENT AND FINANCE**

AN ACT making an appropriation for defraying the expenses of the department of economic development and finance; providing for transfers of funds; providing for the reallocation of funds; to provide for wage requirements for economic development projects; to create and enact a new chapter to title 10 of the North Dakota Century Code, relating to the establishment of the North Dakota development fund; to amend and reenact section 54-34.3-08 of the North Dakota Century Code, relating to patent and royalty rights of the North Dakota development fund; and to repeal chapter 10-30.3 of the North Dakota Century Code, relating to the North Dakota future fund.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the department of economic development and finance for the purpose of defraying its expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$2,148,838
Operating expenses	1,382,035
Equipment	24,500
Grants	1,365,400
General allocation grants	750,000
Technology transfer, incorporated	1,454,000
Development fund	1,968,750
Total all funds	\$9,093,523
Less estimated income	95,000
Total general fund appropriation	\$8,998,523

**SECTION 2. TRANSFERS - ECONOMIC DEVELOPMENT FUNDS.** Of the general fund amount appropriated in section 1 of this Act, \$1,968,750 must be transferred to the North Dakota development fund and \$1,454,000 must be transferred to the technology transfer fund. The transfers must be in amounts and at such times as requested by the director of the office of management and budget.

**SECTION 3. REGIONAL RURAL DEVELOPMENT REVOLVING LOAN FUND TRANSFERS.** All moneys in the regional rural development revolving loan fund totaling approximately \$6,000,000 and any investment, contract, partnership, or any other business transaction of the regional rural development revolving loan fund is transferred to the North Dakota development fund on the effective date of this Act and is deemed to be an asset of the North Dakota development fund.

**SECTION 4. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS.** Of the \$7,968,750 to be available in the North Dakota development fund, \$6,000,000 must be dedicated for the purpose of providing

financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in areas in the state which are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. These funds must be allocated for the benefit of each of the areas delineated as regions by executive order of the governor pursuant to section 54-40.1-02. The balance, or \$1,968,750, must be dedicated for projects as follows: forty percent businesses in rural areas, forty percent businesses in urban areas, and twenty percent North Dakota American Indian businesses. Any unused funds in any category may be transferred to another category during the second year of the biennium under rules adopted by the director of the department of economic development and finance. The director of the department of economic development and finance may reallocate up to twenty percent of any region's allocation to another region or regions for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. REALLOCATION OF ECONOMIC DEVELOPMENT FUNDS.** The director of the department of economic development and finance may reallocate among the technology transfer, inc., fund and the North Dakota development fund for rural and nonrural development projects up to ten percent of the amounts appropriated for these purposes for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 6. NORTH DAKOTA FUTURE FUND TRANSFERS.** Any moneys in the North Dakota future fund and any investment, contract, partnership, or any other business transaction of the North Dakota future fund is transferred to the North Dakota development fund on the effective date of this Act and is deemed to be an asset of the North Dakota development fund.

**SECTION 7. ECONOMIC DEVELOPMENT FUNDS - WAGE REQUIREMENTS.** Any political subdivision or economic development authority may adopt a minimum wage requirement for any new business or business expansion in which a majority of the capital is provided by the North Dakota development fund and their own local development funds. These wage requirements may be imposed on all or any portion of the employees and may exceed federal minimum wage requirements.

**SECTION 8.** A new chapter to title 10 of the North Dakota Century Code is created and enacted as follows:

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

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the North Dakota development fund, incorporated, established under this chapter.
3. "North Dakota business" means a business owned by a North Dakota resident, partnership, association, corporation, or limited liability company domiciled in this state or a corporation or limited liability company, including a wholly owned subsidiary of a foreign corporation or limited liability company that does business primarily in this state or does substantially all of its production in this state.
4. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor, adds value to a product, process, or

service that results in the creation of new wealth. The term includes tourism, but does not include production agriculture.

Purpose and fund uses.

1. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.
2. The exclusive focus of this corporation is business development in this state; however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to state residents in the creation of jobs or secondary business. Emphasis should be to develop jobs that provide an income adequate to support a family above the poverty level.
3. Moneys in the development fund may be used to provide working capital or for financing the purchase of fixed assets, but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
4. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.

Organization. A board of directors shall manage the corporation. The board of directors shall adopt and amend articles of incorporation and bylaws consistent with the purposes detailed in this chapter. The board of directors consists of eight members who shall serve three-year terms. The terms must be staggered so that no more than three positions require reappointment in any one year. The governor shall appoint the members and shall only consider representatives who serve in executive capacities from the following areas in making the selections: private sector manufacturing, finance, exported services, including tourism, and industrial technology and research. There must be at least one member who is enrolled in a federally recognized North Dakota Indian tribe who need not serve in an executive capacity, the director of economic development and finance, and one member from a rural area, on the board of directors. Members may be reappointed for additional terms.

Powers. The corporation must be organized as a nonprofit corporation under chapter 10-24. In addition to the powers in chapter 10-24, the corporation may:

1. Cooperate and contract with any private or public entity.

2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.

Management. The deputy director of the finance division of the department must be the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions.

All investments, contracts, partnerships, limited liability companies, and business transactions of the corporation are the responsibility of the deputy director and the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

Divestiture. The board of directors shall establish a policy for divesting the corporation's interest in any business when certain levels of profitability are obtained.

Confidentiality of corporation records. The following records of the corporation are confidential:

1. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase, to which a loan has been made, or capital otherwise provided, under this chapter.
2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.

Annual audit. The board of directors shall contract with a certified public accounting firm to audit annually the financial statements of the corporation in accordance with generally accepted auditing standards. The cost of the audit must be borne by the corporation.

Annual report. The corporation shall prepare and publish an annual report of its activities for the information of the governor, the legislative assembly, and the public. The report must include audited financial statements of the corporation for the fiscal year covered by the report and must specify:

1. The investment strategy and workplan approved by the board of directors.
2. The total investments made annually by the corporation in North Dakota businesses.
3. An estimate of jobs created and jobs preserved by investments of the corporation in North Dakota businesses.

North Dakota development fund - Continuing appropriation. The North Dakota development fund is established from moneys appropriated from the general fund and transfers from other funds. This is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11.



**SECTION 9. AMENDMENT.** Section 54-34.3-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-08. Patents.** The department of economic development and finance, technology transfer, incorporated, the North Dakota ~~future~~ development fund, incorporated, and the North Dakota agricultural products utilization commission may hold or assign for remuneration all or a portion of their interest in patents or royalty rights acquired in the course of their operation and performance of duties as provided by law.

**SECTION 10. LEGISLATIVE INTENT - TECHNOLOGY TRANSFER, INC. - PROJECT FUNDS.** It is the intent of the legislative assembly that project funds be distributed by technology transfer, inc., consistent with the mission and policies established by the technology transfer, inc., board and that project funds be distributed, to the extent practical and efficient, directly to businesses and individuals receiving project funding approval. Funding recipients may use the project funds to purchase services, on a fee for service basis, from business and industry development centers located on the campuses of the institutions of higher education.

**<sup>2</sup> SECTION 11. REPEAL.** Chapter 10-30.3 of the 1993 Supplement to the North Dakota Century Code is repealed.

Approved April 17, 1995  
Filed April 18, 1995

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<sup>2</sup> Section 10-30.3-11 was amended by section 3 of House Bill No. 1289, chapter 108.

**CHAPTER 22****HOUSE BILL NO. 1022**  
(Appropriations Committee)**BOARD FOR VOCATIONAL AND TECHNICAL  
EDUCATION**

AN ACT making an appropriation for defraying the expenses of the state board for vocational and technical education; to provide a statement of legislative intent; and to allow the transfer of appropriation authority to the salaries and wages line item.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state board for vocational and technical education for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$ 2,378,039
Operating expenses	471,066
Equipment	18,680
Grants	20,055,750
COVE	325,500
Adult farm management	226,600
Postsecondary education vocational grants	380,000
Small business management	<u>102,306</u>
Total all funds	\$23,957,941
Less estimated income	<u>13,195,391</u>
Total general fund appropriation	\$10,762,550

**SECTION 2. INTENT.** It is the intent of the fifty-fourth legislative assembly that the state board for vocational and technical education, job service North Dakota, the North Dakota university system, the workers compensation bureau, the department of economic development and finance, the governor's work force development council, and any other appropriate state agencies or institutions continue to cooperate on the development and implementation of jobs training programs in an effort to maximize the delivery of services while minimizing any duplication of services between the agencies during the 1995-97 biennium.

**SECTION 3. TRANSFER.** The state board for vocational and technical education may transfer general fund and special funds appropriation authority of \$130,981 from the various line items contained in House Bill No. 1022 as passed by the fifty-fourth legislative assembly to the salaries and wages line item for the position of deputy director, only upon approval by the budget section of the legislative council.

Approved April 6, 1995  
Filed April 6, 1995

## CHAPTER 23

## SENATE BILL NO. 2001

(Appropriations Committee)

## GOVERNOR

AN ACT to provide an appropriation for defraying the expenses of the office of the governor; and to amend and reenact sections 54-07-04 and 54-08-03 of the North Dakota Century Code, relating to the salaries of the governor and lieutenant governor.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the office of the governor for the purpose of defraying the expenses of the governor, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$1,621,864
Operating expenses	265,210
Equipment	5,000
Contingency	10,000
Roughrider awards	8,000
President electors	500
Governor's transition in	5,000
Governor's transition out	5,000
Total general fund appropriation	<u>\$1,920,574</u>

**SECTION 2. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE.** The governor's office is hereby authorized to receive and expend any federal or private funds which are hereby appropriated which become available during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. AMENDMENT.** Section 54-07-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-07-04. Salary of governor.** The annual salary of the governor is ~~sixty-seven~~ sixty-nine thousand ~~eight~~ six hundred ~~four~~ two hundred ~~fifty~~ thirty-eight dollars through June 30, ~~1992~~ 1996, and ~~sixty-eight~~ sixty-nine thousand ~~two~~ two hundred ~~eighty-four~~ thirty-eight dollars thereafter.

**SECTION 4. AMENDMENT.** Section 54-08-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-08-03. Salary of lieutenant governor.** The annual salary of the lieutenant governor is ~~fifty-five~~ fifty-seven thousand ~~six~~ two hundred ~~thirty-six~~ thirty-eight dollars through June 30, ~~1992~~ 1996, and ~~fifty-six~~ fifty-eight thousand ~~one~~ three hundred ~~sixteen~~ eighty-three dollars thereafter.

Approved March 21, 1995

Filed March 23, 1995

## CHAPTER 24

## SENATE BILL NO. 2002

(Appropriations Committee)

## SECRETARY OF STATE

AN ACT to provide an appropriation for defraying the expenses of the secretary of state and public printing; and to amend and reenact section 54-09-05 of the North Dakota Century Code, relating to the salary of the secretary of state.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the secretary of state for the purpose of defraying the expenses of the secretary of state and public printing, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

## Subdivision 1.

## SECRETARY OF STATE

Salaries and wages	\$1,493,419
Operating expenses	1,270,200
Equipment	45,000
Petition review	14,000
Total general fund appropriation	\$2,822,619

## Subdivision 2.

## SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$ 421,974
Total general fund appropriation	\$ 421,974
Grand total general fund appropriation S.B. 2002	\$3,244,593

**SECTION 2. AMENDMENT.** Section 54-09-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-09-05. Salary of secretary of state.** The annual salary of the secretary of state is ~~fifty-one~~ fifty-two thousand ~~two~~ seven hundred ~~seventy-two~~ eighty-seven dollars through June 30, ~~1992~~ 1996, and ~~fifty-one~~ fifty-three thousand ~~seven~~ eight hundred ~~fifty-two~~ forty-three dollars thereafter.

Approved March 21, 1995

Filed March 23, 1995

**CHAPTER 25****SENATE BILL NO. 2003**  
(Appropriations Committee)**ATTORNEY GENERAL**

AN ACT to provide an appropriation for defraying the expenses of the attorney general; and to amend and reenact section 54-12-11 and subsection 3 of section 62.1-04-03 of the North Dakota Century Code, relating to the salary of the attorney general and concealed weapons license fees.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$11,785,066
Operating expenses	4,113,498
Equipment	887,697
Grants	4,175,567
Arrest and return of fugitives	19,376
Controlled substance	4,000
ARC legal fees	91,027
Litigation fees	143,324
Gaming commission	20,000
State employee defense	250,000
Racing commission	211,300
Total all funds	\$21,700,855
Less estimated income	9,588,834
Total general fund appropriation	\$12,112,021

**SECTION 2. FIRE AND TORNADO FUND.** The estimated income line item in section 1 of this Act includes the sum of \$740,660, or so much of the sum as may be necessary, from the state fire and tornado fund, for the purpose of defraying the expenses related to the state fire marshal program.

**SECTION 3. ASSET FORFEITURE FUND.** The sum of \$25,000 is available from the asset forfeiture fund to the attorney general as included in estimated income of section 1 of this Act.

**SECTION 4. BONDING FUND.** The appropriation in section 1 of this Act includes up to \$250,000, or so much of the sum as may be necessary, from the state bonding fund to the attorney general for the purpose of providing state employee defense services pursuant to section 26.1-21-10.2. The emergency commission, notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1995, and ending June 30, 1997, to approve the expenditure of the funds from the state bonding fund appropriated in section 1 of this Act to the extent necessary and based upon applications by the attorney general. Funds expended by the attorney general for state employee defense must be reimbursed to the state

bonding fund through deficiency appropriation and the attorney general shall report to the budget section of the legislative council the amount of any deficiency appropriation that may be introduced to the fifty-fifth legislative assembly.

**SECTION 5. COLLECTIONS.** Section 1 of this Act includes the appropriation of up to \$15,000 in revenues collected from fees charged for gaming law and administrative rules manuals published by the attorney general for the period beginning July 1, 1995, and ending June 30, 1997.

**SECTION 6. LOCAL GAMING ENFORCEMENT GRANTS.** The attorney general, through the state treasurer's office, shall pay, from funds appropriated in the grants line item in section 1 of this Act, \$130,652 per quarter to cities and counties in proportion to the adjusted gross proceeds within each city, for sites within city limits, or within each county, for sites outside city limits, to the total adjusted gross proceeds for the biennium beginning July 1, 1995, and ending June 30, 1997. The attorney general may make a payment to a city or county pursuant to this section only if the amount owed to a city or county for that quarter is ten dollars or more. Any amounts received by a city or county under this section must be used by the city or county for expenses connected with gaming enforcement within the city or county.

**SECTION 7. AMENDMENT.** Section 54-12-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-12-11. Salary of attorney general.** The annual salary of the attorney general is ~~fifty-seven~~ fifty-nine thousand ~~nine~~ five hundred ~~twenty-eight~~ seventy-six dollars through June 30, ~~1992~~ 1996, and ~~fifty-eight~~ sixty thousand ~~four~~ seven hundred ~~eight~~ sixty-eight dollars thereafter.

**SECTION 8. AMENDMENT.** Subsection 3 of section 62.1-04-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The license fee for a concealed weapons license is ~~fifteen~~ twenty-five dollars. Ten dollars of this fee must be credited to the state general fund and ~~five~~ fifteen dollars of this fee must be credited to the attorney general's operating fund up to a total of fifty thousand dollars each biennium. Any collections from fifteen dollars of this fee in excess of the fifty thousand dollars credited to the attorney general's operating fund each biennium must be credited to the state general fund. The license fee must be paid before the license is issued by the ~~chief~~ director of the bureau of criminal investigation.

Approved April 17, 1995

Filed April 18, 1995

## CHAPTER 26

SENATE BILL NO. 2004  
(Appropriations Committee)

## STATE AUDITOR

AN ACT to provide an appropriation for defraying the expenses of the state auditor; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Administration	\$ 240,655
Division of local government audits	1,046,622
Division of state audits	2,943,229
Mineral royalty auditing	612,059
Total all funds	\$4,842,565
Less estimated income	1,654,044
Total general fund appropriation	\$3,188,521

**SECTION 2. APPROPRIATION.** Section 1 of this Act includes an appropriation of up to \$1,042,314 in funds generated by the state auditor from political subdivision audit service fees for the period beginning July 1, 1995, and ending June 30, 1997. Any amount in excess of \$1,042,314 must be deposited in the state auditor operating account and made available for appropriation after June 30, 1997.

**SECTION 3. LINE ITEM TRANSFERS.** Upon approval of the emergency commission, the state auditor may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

**SECTION 4. AMENDMENT.** Section 54-10-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-10-10. Salary of state auditor.** The annual salary of the state auditor is ~~fifty-one~~ fifty-two thousand ~~two~~ seven hundred ~~seventy-two~~ eighty-seven dollars through June 30, ~~1992~~ 1996, and ~~fifty-one~~ fifty-three thousand ~~seven~~ eight hundred ~~fifty-two~~ forty-three dollars thereafter.

**SECTION 5. DEPUTY POSITION.** The state auditor may fund a deputy state auditor position only to the extent funds are available within the agency's appropriation.

Approved April 4, 1995

Filed April 4, 1995



## CHAPTER 27

## SENATE BILL NO. 2005

(Appropriations Committee)

## STATE TREASURER

AN ACT to provide an appropriation for defraying the expenses of the state treasurer; and to amend and reenact section 54-11-13 of the North Dakota Century Code, relating to the salary of the state treasurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state treasurer for the purpose of defraying the expenses of the state treasurer, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$534,894
Operating expenses	95,569
Equipment	<u>6,000</u>
Total general fund appropriation	\$636,463

**SECTION 2. AMENDMENT.** Section 54-11-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-11-13. Salary of state treasurer.** The annual salary of the state treasurer is ~~fifty-one~~ fifty-two thousand ~~two~~ seven hundred ~~seventy-two~~ eighty-seven dollars through June 30, ~~1992~~ 1996, and ~~fifty-one~~ fifty-three thousand ~~seven~~ eight hundred ~~fifty-two~~ forty-three dollars thereafter.

Approved March 28, 1995

Filed March 29, 1995

**CHAPTER 28****SENATE BILL NO. 2006**

(Appropriations Committee)

**TAX COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the office of the state tax commissioner; and to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the salary of the state tax commissioner.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the state tax commissioner for the purpose of defraying the expenses of the state tax commissioner for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$10,885,330
Operating expenses	3,489,353
Equipment	42,937
Expert witness contingency	90,000
City tax administration fees	40,000
Motor fuels federal grant	250,000
Total all funds	\$14,797,620
Less estimated income	352,000
Total general fund appropriation	\$14,445,620

**SECTION 2. TRANSFER.** There is hereby transferred to the general fund in the state treasury, out of motor vehicle fuel tax revenue, collected pursuant to section 57-43.1-02, the sum of \$1,071,878 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of these taxes.

**SECTION 3. LEGISLATIVE INTENT - REVENUE COLLECTIONS.** It is the intent of the legislative assembly that the general fund revenue collections for the biennium beginning July 1, 1995, and ending June 30, 1997, will not be affected by the funding level approved by the legislative assembly for the tax department for the 1995-97 biennium.

**SECTION 4. LEGISLATIVE INTENT - FTE POSITIONS.** It is the intent of the legislative assembly that the tax commissioner determine any employee position reductions or pay equity increase rescissions relating to tax department employees for the biennium beginning July 1, 1995, and ending June 30, 1997, which may be necessary as a result of salary increases provided to tax department employees during the 1993-95 biennium. Although the tax commissioner has the authority to establish salary levels for tax department employees, the legislative assembly expresses concern that compression and salary increase inequity among all state employees may result from salary increases being provided that have not been authorized by the legislative assembly.

**SECTION 5. AMENDMENT.** Section 57-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-01-04. Salary.** The annual salary of the state tax commissioner is ~~fifty-one~~ fifty-two thousand ~~two~~ seven hundred ~~seventy-two~~ eighty-seven dollars through June 30, ~~1992~~ 1996, and ~~fifty-one~~ fifty-three thousand ~~seven~~ eight hundred ~~fifty-two~~ forty-three dollars thereafter.

Approved April 11, 1995

Filed April 12, 1995

## CHAPTER 29

### SENATE BILL NO. 2007 (Appropriations Committee)

### LABOR COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the office of the labor commissioner; and to amend and reenact section 34-05-01.2 of the North Dakota Century Code, relating to the salary of the labor commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the labor commissioner for the purpose of defraying the expenses of the labor commissioner for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$553,988
Operating expenses	<u>114,535</u>
Total all funds	\$668,523
Less estimated income	<u>74,622</u>
Total general fund appropriation	\$593,901

**SECTION 2. AMENDMENT.** Section 34-05-01.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-05-01.2. Department of labor to be administered by commissioner of labor.** The department of labor must be administered by a commissioner of labor who must be elected for a four-year term on a no-party ballot in the year 1966 and every four years thereafter in the same manner as provided for no-party candidates pursuant to title 16.1. Following his election, the term of the commissioner of labor commences on the same day as the terms for other elected state officials. The commissioner of labor shall possess the same qualifications for office as the commissioner of agriculture. The annual salary of the commissioner of labor is ~~forty-nine~~ forty-two thousand ~~nine~~ two hundred ~~ninety-seven~~ dollars through June 30, ~~1992~~ 1996, and ~~fifty-one~~ fifty-three thousand ~~two~~ three hundred ~~seventy-two~~ forty-three dollars thereafter.

Approved March 21, 1995  
Filed March 23, 1995

## CHAPTER 30

## SENATE BILL NO. 2008

(Appropriations Committee)

## PUBLIC SERVICE COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the public service commission; to amend and reenact section 49-01-05, subsection 7 of section 49-02-02, sections 49-03.1-04, 49-21-01.2, and subsection 6 of section 49-21-01.7 of the North Dakota Century Code, relating to the salary of public service commissioners, a special account for depositing and spending money associated with regulating public utilities and telecommunications companies, exemption from rate regulation for telecommunications companies, and factors to be considered by the public service commission in granting or denying a certificate of public convenience and necessity; to provide for a legislative council study; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the public service commission for the purpose of defraying the expenses of the public service commission, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$4,160,158
Operating expenses	1,003,054
Equipment	167,500
Grants	20,000
AML contractual services	<u>4,552,405</u>
Total all funds	<u>\$9,903,117</u>
Less estimated income	<u>6,730,600</u>
Total general fund appropriation	<u>\$3,172,517</u>

**SECTION 2. AMENDMENT.** Section 49-01-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**49-01-05. Salary of commissioners.** The annual salary of a commissioner is ~~fifty-one~~ fifty-two thousand ~~two~~ seven hundred ~~seventy-two~~ eighty-seven dollars through June 30, ~~1992~~ 1996, and ~~fifty-one~~ fifty-three thousand ~~seven~~ eight hundred ~~fifty-two~~ forty-three dollars thereafter. All fees received or charged by any such commissioner for any act or service rendered in any official capacity, shall be accounted for and paid over by ~~him~~ the commissioner monthly to the state treasurer and shall be credited to the general fund of the state.

<sup>3</sup> **SECTION 3. AMENDMENT.** Subsection 7 of section 49-02-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on rate increase applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any hearing or investigation must upon the order of the commission be paid by the public utility involved. The commission shall ascertain the costs and expenditures. After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility. The billing and order may be made from time to time during the hearing or investigation or at the conclusion thereof, as the commission determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment draw interest at the rate of six percent per annum from the date of receipt of the order. All costs and expenses collected by the commission under this subsection must be deposited in the general fund in the state treasury a special account within the public service commission.

**SECTION 4. AMENDMENT.** Section 49-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**49-03.1-04. Factors to be considered by commission in granting or denying a certificate.** Before granting a certificate of public convenience and necessity, the commission shall take into consideration:

1. Need for the service.
2. Fitness and ability of applicant to provide service.
3. Effect on other public utilities providing similar service.
4. Adequacy of proposed service.
5. ~~Proposed rates.~~
6. ~~Proposed design.~~
7. Such other information as the commission may deem appropriate. The technical, financial, and managerial ability of the applicant to provide service.

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<sup>3</sup> Section 49-02-02 was also amended by section 2 of House Bill No. 1373, chapter 444.

**SECTION 5. AMENDMENT.** Section 49-21-01.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**49-21-01.2. Exemption - Rate regulation.** Except as provided for in this chapter and sections 49-02-01.1, 49-02-21, 49-02-22, and 49-04-02.1, ~~and 49-04-05,~~ telecommunications companies and all telecommunications services are exempt from the provisions of chapters 49-02, 49-04, 49-05, and 49-06. Telecommunications companies and services are not subject to rate or rate of return regulation. Any telecommunications company may elect not to be subject to the provisions of this section and section 49-21-01.3, and to be subject to rate and rate of return regulation, by filing an election with the commission in writing. For telecommunications companies with over fifty thousand subscribers, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable election.

**SECTION 6. AMENDMENT.** Subsection 6 of section 49-21-01.7 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. ~~All amounts~~ Amounts collected by the commission under this subsection relating to expenses of the regulatory reform review commission must be deposited in the general fund of the state treasury. All other amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.

**SECTION 7. LEGISLATIVE COUNCIL STUDY.** The legislative council shall study, during the 1995-96 interim, the services provided by the public service commission, their cost and effectiveness, and the need for continuing the services as a result of regulatory changes at both the state and federal level.

**SECTION 8. EMERGENCY.** Sections 4 and 5 of this Act are declared to be an emergency measure.

Approved April 13, 1995  
Filed April 18, 1995

## CHAPTER 31

### SENATE BILL NO. 2009 (Appropriations Committee)

### AGRICULTURE COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the commissioner of agriculture and soil conservation committee; to provide for a report to the budget section; and to amend and reenact section 4-01-21 of the North Dakota Century Code, relating to the salary of the commissioner of agriculture.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the commissioner of agriculture and soil conservation committee for the purpose of defraying the expenses of the commissioner of agriculture for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

##### Subdivision 1.

#### AGRICULTURE COMMISSIONER

Salaries and wages	\$2,807,321
Operating expenses	1,465,418
Equipment	22,900
Grants	811,720
Board of animal health	445,456
Ag mediation	1,328,571
Ag in the classroom	25,000
Waterbank	214,000
Pride of dakota	150,000
Safe send	650,000
Noxious weeds	971,438
Total all funds	\$8,891,824
Less estimated income	4,330,876
Total general fund appropriation	\$4,560,948

##### Subdivision 2.

#### SOIL CONSERVATION COMMITTEE

Salaries and wages	\$ 456,782
Operating expenses	58,533
Grants	500,000
Total general fund appropriation	\$1,015,315
Total general fund appropriation S.B. 2009	\$5,576,263
Total special funds appropriation S.B. 2009	\$4,330,876
Total all funds appropriation S.B. 2009	\$9,907,139

**SECTION 2. AGRICULTURE COMMISSIONER - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$1,462,156, or so much of the sum as may be necessary, from the environment and rangeland protection fund for the purpose



of defraying pesticide, registration, and noxious weeds program costs, of which \$689,046 is for the pesticide program, \$90,000 is for the registration program, \$34,000 is for spotted knapweed control, and \$649,110 is for other noxious weed control, for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. LEGISLATIVE INTENT - REGISTRATION PROGRAM ADMINISTRATIVE COSTS.** It is the intent of the legislative assembly that the environment and rangeland protection fund not be used to provide funding for registration program administrative costs beyond the biennium beginning July 1, 1995, and ending June 30, 1997, and that the agriculture commissioner request funding for the registration program administrative costs from a source other than the environment and rangeland protection fund for the 1997-99 biennium.

**SECTION 4. SOIL CONSERVATION COMMITTEE CONSOLIDATION - REPORT TO BUDGET SECTION.** The executive secretary of the soil conservation committee shall present a report to the budget section by April 1, 1996, containing at least two options to integrate the functions of the soil conservation committee with another state agency. The report must include plans to consolidate the soil conservation committee with the state water commission and plans to consolidate the committee with the North Dakota state university extension service, and may include, with prior emergency commission approval, plans to consolidate with any other state agency. The budget section shall review the report and make a recommendation to the director of the office of management and budget regarding consolidation of the soil conservation committee with another state agency by July 1, 1996.

**SECTION 5. AMENDMENT.** Section 4-01-21 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-01-21. Salary of commissioner of agriculture.** The annual salary of the commissioner of agriculture is ~~fifty-one~~ fifty-two thousand ~~two~~ seven hundred ~~seventy-two~~ eighty-seven dollars through June 30, ~~1992~~ 1996, and ~~fifty-one~~ fifty-three thousand ~~seven~~ eight hundred ~~fifty-two~~ forty-three dollars thereafter.

Approved April 13, 1995  
Filed April 18, 1995

**CHAPTER 32****SENATE BILL NO. 2010**

(Appropriations Committee)

**INSURANCE COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; and to amend and reenact section 26.1-01-09 of the North Dakota Century Code, relating to the salary of the insurance commissioner.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, and from other special funds derived from federal funds and other income, to the insurance commissioner for the purpose of defraying the expenses of the insurance commissioner, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$3,640,378
Operating expenses	1,314,123
Equipment	<u>228,599</u>
Total special funds appropriation	\$5,183,100

**SECTION 2. APPROPRIATION - INSURANCE TAX PAYMENTS TO FIRE DEPARTMENTS.** There is hereby appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$5,200,000, or so much of the sum as may be necessary, to the commissioner of insurance for the purpose of making payments of insurance premiums to fire departments for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. BONDING FUND.** Section 1 of this Act includes the sum of \$92,312, or so much of the sum as may be necessary, from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 4. FIRE AND TORNADO FUND.** Section 1 of this Act includes the sum of \$664,455, or so much of the sum as may be necessary, from the state fire and tornado fund to pay fire and tornado fund administrative expenses for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. UNSATISFIED JUDGMENT FUND.** Section 1 of this Act includes the sum of \$65,000, or so much of the sum as may be necessary, from the state unsatisfied judgment fund to pay unsatisfied judgment fund administrative expenses for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 6. PETROLEUM TANK RELEASE COMPENSATION FUND.** Section 1 of this Act includes the sum of \$200,030, or so much of the sum as may be necessary, from the petroleum tank release compensation fund to pay petroleum tank release compensation fund administrative expenses for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 7. AMENDMENT.** Section 26.1-01-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-09. Salary of commissioner.** The annual salary of the commissioner is ~~fifty-one~~ fifty-two thousand ~~two~~ seven hundred ~~seventy-two~~ eighty-seven dollars through June 30, ~~1992~~ 1996, and ~~fifty-one~~ fifty-three thousand ~~seven~~ eight hundred ~~fifty-two~~ forty-three dollars thereafter.

Approved April 4, 1995

Filed April 4, 1995

**CHAPTER 33****SENATE BILL NO. 2011**

(Appropriations Committee)

**SECURITIES COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the office of the securities commissioner.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the securities commissioner for the purpose of defraying the expenses of the office of the securities commissioner, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$535,740
Operating expenses	96,389
Equipment	<u>6,000</u>
Total general fund appropriation	\$638,129

Approved April 5, 1995

Filed April 5, 1995

**CHAPTER 34****SENATE BILL NO. 2012**

(Appropriations Committee)

**HUMAN SERVICES**

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to provide for the transfer of appropriations between agencies and institutions; to rename the developmental center the developmental center at westwood park, Grafton; to authorize the state of North Dakota to convey certain state-owned land to Community Housing, Inc.; to create and enact a new section to chapter 25-04, two new sections to chapter 50-06, and a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to the westwood park assets management committee, to developmental disabilities service providers, to the administration of the mental health division, and to the duties of the department of human services; to amend and reenact sections 25-04-01, 50-01-13 as amended by section 10 of Senate Bill No. 2037, as approved by the fifty-fourth legislative assembly, and 50-06-14.3 of the North Dakota Century Code and section 4 of chapter 561 of the 1991 Session Laws as amended by section 18 of chapter 2 of the 1993 Session Laws, relating to renaming the developmental center the developmental center at westwood park, Grafton, county medical services for the poor, the state basic care program, and extending an appropriation from the lands and minerals trust fund to the department of human services for capital improvements or demolition of existing buildings at the developmental center at westwood park, Grafton; to encourage a waiver of federal medicaid requirements; and to provide for reports to the budget section regarding nursing home cost increases.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services and its various divisions, for the purpose of defraying their expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.****MANAGEMENT AND COUNCILS**

Salaries and wages	\$ 7,685,631
Operating expenses	13,350,915
Grants	667,278
Developmentally disabled facility loan fund	1,840,956
Equipment	<u>105,684</u>
Total all funds	\$ 23,650,464
Less estimated income	<u>15,890,069</u>
Total general fund appropriation	\$ 7,760,395

**Subdivision 2.**

**ECONOMIC ASSISTANCE**

Salaries and wages	\$ 7,583,053
Operating expenses	25,275,668
Equipment	81,715
Capital improvements	2,543
Grants - assistance payments	125,460,565
Grants - medical assistance	566,349,024
Total all funds	\$ 724,752,568
Less estimated income	540,752,514
Total general fund appropriation	\$ 184,000,054

**Subdivision 3.****PROGRAM AND POLICY**

Salaries and wages	\$ 9,952,704
Operating expenses	17,334,562
Equipment	583,968
Capital improvements	32,618
Grants	94,083,413
Total all funds	\$ 121,987,265
Less estimated income	88,517,873
Total general fund appropriation	\$ 33,469,392

**Subdivision 4. FIELD SERVICES****HUMAN SERVICE CENTERS**

Salaries and wages	\$ 57,004,695
Operating expenses	10,142,411
Equipment	647,002
Capital improvements	200,221
Grants	9,830,723
Total all funds	\$ 77,825,052
Less estimated income	40,626,567
Total general fund appropriation	\$ 37,198,485

**STATE HOSPITAL**

Salaries and wages	\$ 43,263,472
Operating expenses	8,081,279
Equipment	352,987
Capital improvements	1,000,000
Total all funds	\$ 52,697,738
Less estimated income	16,280,379
Total general fund appropriation	\$ 36,417,359

**DEVELOPMENTAL CENTER**

Salaries and wages	\$ 29,392,308
Operating expenses	7,644,021
Equipment	132,558
Capital improvements	323,275
Total all funds	\$ 37,492,162
Less estimated income	27,120,272
Total general fund appropriation	\$ 10,371,890
Total all funds - subdivision 4	\$ 168,014,952
Total estimated income - subdivision 4	\$ 84,027,218
Total general fund appropriation - subdivision 4	\$ 83,987,734
Grand total general fund appropriation S.B. 2012	\$ 309,217,575
Grand total special fund appropriation S.B. 2012	\$ 729,387,674
Grand total all funds S.B. 2012	\$1,038,605,249

**SECTION 2. LANDS AND MINERALS TRUST FUND.** The amount of \$1,840,956, or so much of the sum as may be necessary, as appropriated in the developmentally disabled facility loan fund line item in section 1 of this Act, may be expended by the department of human services from the lands and minerals trust fund for the purpose of making payments of principal and interest to the common schools trust fund on any loans made from it pursuant to the developmentally disabled loan fund program nos. 2 and 3 for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND.** There may be expended by the department of human services, on or before June 1, 1997, from the cash balance of, and any payments deposited in, the revolving loan fund created under section 6-09.6-01, the sum of \$2,690,515, or so much of the sum as may be necessary, which is appropriated in section 1 of this Act.

**SECTION 4. TRANSFER.** Upon approval of the emergency commission, the director of the department of human services may transfer appropriation authority between agencies and institutions included in subdivisions 1 through 4 of section 1 of this Act.

**SECTION 5. CORRELATION OF RESOURCES FOR DEPARTMENTAL CLIENTS.** Notwithstanding section 4 of this Act, the director of the department of human services may transfer appropriation authority and authorized positions between agencies and institutions included within subdivision 4 of section 1 of this Act to correlate fiscal and staff resources with the flow of institutional residents and human service center clients between community-based programs and the institutions.

**SECTION 6. TRANSFER OF LAND AUTHORIZED.**

1. The state of North Dakota may convey to Community Housing, Inc., two acres of land owned by the state from a parcel of land which is located in Walsh County and described as follows:

Part of Lot 1, Block 1, 7.06 acres, State School First Addition.

2. The conveyance authorized by this section must be made for thirty percent above the average price per acre of the property authorized to be transferred pursuant to section 1 of chapter 561 of the 1991 Session Laws.
3. Any conveyance of the land described in subsection 1 must include a provision that the land and any improvements on the land revert to the state of North Dakota if the land ceases to be used for the housing of seasonal migrant workers.
4. The conveyance authorized by this section is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
5. The attorney general shall review and approve as to form and legality all legal documents required for the conveyance authorized by this section, including title opinions.
6. No state general fund moneys may be used for the construction or operation of housing units on this property.

**SECTION 7. AMENDMENT.** Section 25-04-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**25-04-01. Developmental center - Name - Administration and control.** A facility for developmentally disabled persons must be maintained at or near the city of Grafton in Walsh County. The facility must also be available for a person who is determined to be a person who may benefit from the facility's services. The facility must be known and designated as the developmental center at westwood park, Grafton. The department of human services has administrative authority and control of the developmental center at westwood park, Grafton, and westwood park.

**SECTION 8.** A new section to chapter 25-04 of the North Dakota Century Code is created and enacted as follows:

Westwood park assets management committee. The westwood park assets management committee consists of eleven members appointed by the governor as follows: three members of the senate, two from the majority faction and one from the minority faction, and three members of the house of representatives, two from the majority faction and one from the minority faction; a representative of the department of human services; a representative of the department of economic development and finance; a representative of the attorney general's office; the mayor of Grafton; and the governor or the governor's designee. The officers of the westwood park assets management committee must be elected annually. Any state agency may serve in an advisory capacity to the westwood park assets management committee at the discretion of the committee. The committee shall meet at least twice each year and at other times as the committee or its chairman may direct. The legislative members of the committee are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and the necessary mileage and travel expenses provided in sections 44-08-04 and 54-06-09 while attending committee meetings or in the performance of such special duties as the committee may direct. The compensation provided for in this section may not be paid to any member of the committee who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state. The westwood park assets management committee shall act when the legislative assembly is not in session to sell, lease, and otherwise manage the property of westwood park, subject to prior budget section approval. The department of human services shall provide staff services for the westwood park assets committee. Any conveyance made by the committee under this section is exempt from sections 54-01-05.2 and 54-01-05.5.

**SECTION 9. AMENDMENT.** Section 4 of chapter 561 of the 1991 Session Laws as amended by section 18 of chapter 2 of the 1993 Session Laws is amended and reenacted as follows:

**SECTION 4. PROCEEDS - APPROPRIATION.** The proceeds from the sale of land, property, and equipment at the developmental center at Grafton westwood park must be deposited in the lands and minerals trust fund. There is hereby appropriated \$200,000, or so much thereof as may be necessary, from the lands and minerals trust fund, to the department of human services for capital improvements or demolition of existing buildings at the developmental center at Grafton westwood park for the period beginning July 1, 1991, and ending June 30, 1995 1997.

**\* SECTION 10. STATUTORY REFERENCES RELATING TO THE DEVELOPMENTAL CENTER AT WESTWOOD PARK, GRAFTON.** The legislative council may insert appropriate references in the sections of law listed in



this section, consistent with usages contained in this Act. References inserted may be adjusted to suit the contexts and grammar of the sections and must be inserted so as to harmonize existing law with regard to the name changes provided by this Act. Sections of the North Dakota Century Code to which the authority of this section applies are sections 12.1-04-06, 12.1-04-08, 15-39.1-04, 15-47-34, 15-59-05.1, 20.1-03-04, 25-01-01, 25-01-01.1, 25-01-02, 25-01-06, 25-04-00.1, 25-04-02, 25-04-02.2, 25-04-03, 25-04-04, 25-04-05, 25-04-05.1, 25-04-06, 25-04-11, 25-04-11.1, 25-04-11.2, 25-04-14, 25-04-15, 25-04-16, 25-04-17, 25-04-19, 25-16-07, subsection 14 of 50-06-05.1, sections 54-14-03.2, and 57-51.1-08.

**SECTION 11. STATUTORY REFERENCES RELATING TO WESTWOOD PARK.** The legislative council may insert appropriate references in the sections of law listed in this section, consistent with usages contained in this Act. References inserted may be adjusted to suit the contexts and grammar of the sections and must be inserted so as to harmonize existing law with regard to the name changes provided by this Act. Sections of the North Dakota Century Code to which the authority of this section applies are subsection 24 of section 50-06-05.1 and sections 50-06-06.6 and 50-06-06.7.

**SECTION 12. MEASURES ENACTED BY THE FIFTY-FOURTH LEGISLATIVE ASSEMBLY RELATING TO THE DEVELOPMENTAL CENTER AT WESTWOOD PARK, GRAFTON.** The legislative council may insert appropriate references in any measure enacted by the fifty-fourth legislative assembly which refers to the terms "developmental center", "state developmental center", or "state developmental center at Grafton" consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name changes provided by this Act.

**4 SECTION 13. AMENDMENT.** Section 50-01-13 of the North Dakota Century Code as amended by section 10 of Senate Bill No. 2037, as approved by the fifty-fourth legislative assembly, is amended and reenacted as follows:

**50-01-13. Medical attention and hospitalization furnished poor.** ~~In case of necessity~~ Within the limits of the county human services appropriation, the county social service board promptly shall provide necessary medical attention services, covered in the written eligibility standards for general assistance, for any poor person in the county who is not provided for in a public institution. The county social service board shall cause to be furnished to the person the necessary covered medicines prescribed by a physician. ~~In all cases where, in the opinion of the county social service board,~~ Necessary covered hospitalization is necessary; it must be furnished by the county upon approval or subsequent ratification by the board. If the poor person is a nonresident of the state, the county furnishing the medical ~~attention services~~ must be reimbursed within the limits of funds appropriated for that purpose by the legislative assembly for eighty percent of the expenses incurred in carrying out this section. The reimbursement must be made upon vouchers having the approval of the department of human services.

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<sup>4</sup> Section 50-01-13 was also amended by section 10 of Senate Bill No. 2037, chapter 456.

<sup>5</sup> **SECTION 14.** A new subsection to section 50-06-05.1 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

To provide those services necessary for the department and for county social service boards to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.

**SECTION 15.** Two new sections to chapter 50-06 of the North Dakota Century Code are created and enacted as follows:

Developmental disabilities service providers. The department of human services shall allow providers of service to the developmentally disabled to transfer funds received from the department between budget categories and line items.

Mental health division - Administration. The department of human services shall administratively restructure the mental health division to require the division to develop and revise, when necessary, the state mental health plan and provide the mental health division the authority to implement and supervise a unified mental health delivery system and to assure the mental health services provided by the human service centers, the state hospital, and contracted services are in accordance with the state plan.

<sup>6</sup> **SECTION 16. AMENDMENT.** Section 50-06-14.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-06-14.3. Department of human services to develop basic care facility ratesetting methodology.** The department of human services shall develop a ratesetting methodology that provides for rates for all residents of basic care facilities. The methodology may not provide for different rates for similarly situated residents because of the source of payment for any resident's care. The department shall consult with representatives of the basic care industry in this state in developing the ratesetting methodology. Beginning July 1, ~~1995~~ 1997, the department shall establish rates for all residents of basic care facilities in accordance with the ratesetting methodology developed by the department. After June 30, ~~1995~~ 1997, no agency of the state or any political subdivision may make payments to a basic care facility that does not set rates at the levels established by the department.

**SECTION 17. NURSING HOME INFLATIONARY INCREASES - REPORTS TO THE BUDGET SECTION.** If the inflationary adjustments provided in section 1 of this Act are not adequate to fund the adjustments for nursing homes required by subsection 5 of section 50-24.4-10 of the North Dakota Century Code and sufficient savings are not available as a result of less than projected other nursing home costs, the department of human services shall report its plan for funding the additional cost to the budget section for its approval.

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<sup>5</sup> Section 50-06-05.1 was also amended by section 3 of House Bill No. 1074, chapter 457; section 1 of Senate Bill No. 2216, chapter 460; section 25 of House Bill No. 1027, chapter 120; and section 6 of Senate Bill No. 2439, chapter 461.

<sup>6</sup> Section 50-06-14.3 was also amended by section 1 of House Bill No. 1030, chapter 463.

**SECTION 18. MEDICAID DENTAL SERVICES - FEDERAL WAIVERS.**

The legislative assembly encourages the department of human services to apply for a waiver from the federal government's medical assistance freedom of choice requirements to allow the department, on a pilot program basis, to contract for dental services with providers to improve the availability of dental services for medical assistance recipients.

**SECTION 19. CORRELATION OF RESOURCES - MENTAL HEALTH SERVICES.** Notwithstanding section 4 of this Act, at the request of the mental health division, the director of the department of human services shall transfer appropriation authority which may include authorized positions from subdivision 3 to subdivision 4 of section 1 of this Act to provide mental health services through a unified mental health service delivery system.

Approved April 13, 1995

Filed April 18, 1995

\* SECTION 10 was affected as follows:

Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2170, chapter 191; section 5 of Senate Bill No. 2491, chapter 186; and section 25 of House Bill No. 1027, chapter 120.

Section 15-59-05.1 was also amended by section 25 of House Bill No. 1027, chapter 120.

Section 20.1-03-04 was also amended by section 2 of House Bill No. 1058, chapter 243, and section 25 of House Bill No. 1027, chapter 120.

Section 25-01-01.1 was also amended by section 2 of House Bill No. 1058, chapter 243.

Section 50-06-05.1 was also amended by section 3 of House Bill No. 1074, chapter 457; section 1 of Senate Bill No. 2216, chapter 460; section 25 of House Bill No. 1027, chapter 120; and section 6 of Senate Bill No. 2439, chapter 461.

Section 54-14-03.2 was also amended by section 25 of House Bill No. 1027, chapter 120.

**CHAPTER 35****SENATE BILL NO. 2013**

(Appropriations Committee)

**PUBLIC INSTRUCTION**

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the school for the deaf, the school for the blind, and the state library; to amend and reenact section 15-21-02 and subsection 2 of section 39-04.2-04 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction and to the public transportation fund; to provide for application; to provide legislative intent; to require a performance audit; to provide for a transfer of funds from the abandoned motor vehicle fund and the public transportation fund; to provide an exemption; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of public instruction, the school for the deaf, the school for the blind, and the state library for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.****DEPARTMENT OF PUBLIC INSTRUCTION**

Salaries and wages	\$ 9,653,211
Operating expenses	6,231,219
Equipment	553,315
Capital improvements	35,000
Geographic education	50,000
Grants - foundation aid and transportation	432,506,833
Grants - revenue supplement payments	2,225,000
Grants - tuition apportionment	46,017,000
Grants - special education	36,850,000
Grants - other grants	137,899,405
Educational network	270,000
Teacher certification	399,251
Center for innovation and instruction	297,250
SENDIT network	756,000
Prairie public broadcasting	602,667
Total all funds	\$674,346,151
Less estimated income	193,433,833
Total general fund appropriation	\$480,912,318

**Subdivision 2.****STATE LIBRARY**

Salaries and wages	\$ 1,660,013
Operating expenses	893,892
Equipment	22,500
Multitype library authority	100,000

Talking book program	235,271
Grants to school libraries	75,000
Grants	<u>1,048,000</u>
Total all funds	\$ 4,034,676
Less estimated income	<u>1,251,828</u>
Total general fund appropriation	\$ 2,782,848

## Subdivision 3.

## SCHOOL FOR THE DEAF

Salaries and wages	\$ 3,718,393
Operating expenses	828,949
Equipment	26,410
Capital improvements	<u>17,500</u>
Total all funds	\$ 4,591,252
Less estimated income	<u>719,899</u>
Total general fund appropriation	\$ 3,871,353

## Subdivision 4.

## SCHOOL FOR THE BLIND

Salaries and wages	\$ 1,956,624
Operating expenses	515,615
Equipment	93,000
Capital improvements	<u>268,000</u>
Total all funds	\$ 2,833,239
Less estimated income	<u>596,200</u>
Total general fund appropriation	\$ 2,237,039
Grand total general fund appropriation S.B. 2013	\$489,803,558
Grand total special funds appropriation S.B. 2013	\$196,801,760
Grand total all funds appropriation S.B. 2013	\$686,605,318

**SECTION 2. INTENT.** It is the intent of the legislative assembly that the sum of \$46,017,000, or such greater or lesser sums as become available, included in the grants-tuition apportionment and estimated income line items in subdivision 1 of section 1 of this Act, be distributed by the office of management and budget out of any moneys in the state tuition fund in the state treasury to the public schools of this state as provided in section 2 of article IX of the Constitution of North Dakota and chapter 15-44 for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. DISPLACED HOMEMAKER FUND.** The amount of \$250,000, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is from the displaced homemaker fund for the purpose of providing services for displaced homemakers as provided in chapter 14-06.1 for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 4. GRANTS.** The line item entitled grants in subdivision 2 of section 1 of this Act includes \$880,000 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 1996.

**SECTION 5. AMENDMENT.** Section 15-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-02. Salary and traveling expenses.** The annual salary of the superintendent of public instruction is ~~fifty-two~~ fifty-three thousand ~~three~~ eight hundred ~~twelve~~ forty-eight dollars through June 30, ~~1992~~ 1996, and ~~fifty-two~~ fifty-four thousand ~~seven~~ nine hundred ~~ninety-two~~ twenty-five dollars thereafter.

The superintendent is also entitled to reimbursement for expenses incurred in the discharge of official duties, such expenses to be paid monthly on a warrant prepared by the office of management and budget and signed by the state auditor, upon the filing of an itemized and verified statement of expenses.

**SECTION 6. INTENT.** It is the intent of the legislative assembly that the superintendent of public instruction negotiate with the director of the central personnel division to reclassify special education regional coordinator positions to a higher position classification level and to allow the positions to be filled at a salary level higher than the minimum salary range specified by the central personnel division for that position classification.

**SECTION 7. INTENT.** It is the intent of the legislative assembly that special education regional coordinator positions included within the department of public instruction be located in the eight special education regions of the state to the extent possible, by June 30, 1997. No fewer than four special education regional coordinator positions must be located within the corresponding regions of the state as of June 30, 1997, not to include the regional coordinator located in Bismarck, North Dakota, for the region that includes Bismarck, North Dakota. The superintendent of public instruction shall report to the budget section of the legislative council no later than October 31, 1996, on the department's progress in locating the regional coordinator positions in the eight regions of the state.

**SECTION 8. INTENT.** It is the intent of the legislative assembly that the superintendent of public instruction receive input from local school districts and department of public instruction employees located in the eight regions of the state regarding the distribution of federal grants and the implementation of federally required programs.

**SECTION 9. INTENT.** It is the intent of the legislative assembly that an educational program assistant director position to work as a curriculum specialist and an administrative secretary II position to provide clerical assistance in curriculum development be located at the division of independent study building.

**SECTION 10. INTENT.** It is the intent of the legislative assembly that during the 1995-96 interim, the legislative council conduct a study of the library system in North Dakota, including the role and mission of the state library, cooperative library ventures, and research and information systems.

**SECTION 11. PERFORMANCE AUDIT.** The state auditor shall conduct, during the biennium beginning July 1, 1995, and ending June 30, 1997, a performance audit of the department of public instruction, to include a determination of the department's compliance with legislative intent. The state auditor shall present the findings of the performance audit to the legislative audit and fiscal review committee.

**SECTION 12. TRANSPORTATION AID - SPECIAL FUNDS - TRANSFER.** The estimated income line in subdivision 1 of section 1 of this Act includes the sum of \$250,000 from the abandoned motor vehicle fund and the sum of \$630,000 from the public transportation fund, or so much of the sums as may be necessary, that may be transferred at the direction of the superintendent of public instruction for the purpose of transportation aid for the biennium beginning July 1, 1995, and ending June 30, 1997. These transfers may not be made until after it has been determined that all other transfers from the abandoned motor vehicle fund and the public transportation fund required by law for the biennium beginning July 1, 1995, and ending June 30, 1997, can be made.

**SECTION 13. INTENT.** It is the intent of the fifty-fourth legislative assembly that the sum of \$100,000, or so much of the sum as may be available, from the amount appropriated by the fifty-third legislative assembly to the superintendent of public instruction for the purpose of providing telecommunications grants during the biennium beginning July 1, 1993, and ending June 30, 1995, be used to contract with eligible applicants for constructing facilities and obtaining equipment to expand the area receiving public radio service in North Dakota for the period beginning with the effective date of this Act and ending June 30, 1997.

**SECTION 14. APPROPRIATION.** There is hereby appropriated from federal or other funds available the sum of \$800,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of contracting with eligible applicants for constructing facilities and obtaining equipment to expand the area receiving public radio service in North Dakota for the period beginning with the effective date of this Act and ending June 30, 1997.

**SECTION 15. INTENT.** The superintendent of public instruction shall use the moneys made available in section 13 and the moneys appropriated in section 14 of this Act to contract with eligible applicants to build and operate public radio stations in this state. Eligible applicants are those licensed by the federal communications commission to operate noncommercial public radio stations. It is the intent of the legislative assembly that the moneys made available in section 13 and the moneys appropriated in section 14 of this Act be used for the construction of additional public radio stations to serve areas of the state not receiving such service, including the cities of Beach, Bowman, Crosby, Harvey, Hettinger, Tioga, and Devils Lake.

**SECTION 16. EXEMPTION.** The funds appropriated in the telecommunications line item in subdivision 1 of section 1 of 1993 House Bill No. 1003, as approved by the fifty-third legislative assembly, are not subject to the provisions of section 54-44.1-11 and any unexpended funds from that appropriation are available for the purposes of this Act.

**SECTION 17. AMENDMENT.** Subsection 2 of section 39-04.2-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Following authorization of the ~~commissioner~~ director, the state treasurer shall ~~pay the~~ public transportation funds ~~must be paid by the state treasurer~~ to transportation providers in each county. Each county shall receive six thousand one hundred dollars plus fifty cents per capita of population in the county, based upon the latest regular or special official federal census. Each year the director shall increase or decrease the fifty cents per capita amount in order to distribute all funds appropriated for the biennium. If there are multiple transportation providers in one county, then the base amount of six thousand one hundred dollars ~~will~~ must be divided equally among the providers, and the additional per capita amount ~~will~~ must be based upon the percentage of elderly and handicapped ridership provided by each transportation provider within the county.

**SECTION 18. APPLICATION.** During the 1995-97 biennium, the director may not increase or decrease the fifty cent per capita amount authorized by section 17 of this Act until after the transfer provided by this Act as approved by the fifty-fourth legislative assembly.

**SECTION 19. EMERGENCY.** Sections 13, 14, and 15 of this Act are declared to be an emergency measure.

Disapproved April 21, 1995

Filed April 21, 1995



**CHAPTER 36****SENATE BILL NO. 2014**  
(Appropriations Committee)**COMMITTEE ON PROTECTION AND ADVOCACY**

AN ACT to provide an appropriation for defraying the expenses of the committee on protection and advocacy.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the committee on protection and advocacy for the purpose of defraying the expenses of protection and advocacy services, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Total all funds	\$1,899,854
Less estimated income	<u>1,599,854</u>
Total general fund appropriation	\$ 300,000

Approved April 4, 1995

Filed April 4, 1995

**CHAPTER 37****SENATE BILL NO. 2015**

(Appropriations Committee)

**OFFICE OF MANAGEMENT AND BUDGET**

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide a statement of legislative intent relating to state employee compensation adjustments; to provide a statement of legislative intent relating to program-based performance budgeting; to authorize transfer of various special funds to the general fund; to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to state agency participation in the workers compensation bureau risk management program; to amend and reenact sections 54-16-04.2 and 54-27.2-02 of the North Dakota Century Code and section 4 of Senate Bill No. 2029, as approved by the fifty-fourth legislative assembly, relating to emergency commission approval of special funds, the budget stabilization fund, and the use of funds from the veterans' postwar trust fund; to provide directives relating to 911 telephone services; to provide for program reductions if federal programs are terminated or reduced; to require the director of the information services division to receive budget section approval for mainframe computer enhancements; to provide for a risk manager; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the office of management and budget for the purpose of defraying their expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.****OFFICE OF MANAGEMENT AND BUDGET**

Administration	\$ 3,156,166
Fiscal management	3,688,883
Facility management	7,069,297
Central personnel	1,037,077
Intergovernmental assistance	<u>39,740,705</u>
Total all funds	\$ 54,692,128
Less estimated income	<u>41,585,645</u>
Total general fund appropriation	\$ 13,106,483

**Subdivision 2.****INFORMATION SERVICES DIVISION**

Information resource management	\$ 39,702,756
Total special funds appropriation	<u>\$ 39,702,756</u>

**Subdivision 3.**

## CENTRAL SERVICES

Central services	\$ 4,449,708
Total all funds	\$ 4,449,708
Less estimated income	4,162,133
Total general fund appropriation	\$ 287,575

## Subdivision 4.

## STATE RADIO COMMUNICATIONS

Salaries and wages	\$ 2,141,470
Operating expenses	1,910,411
Equipment	103,001
Total all funds	\$ 4,154,882
Less estimated income	1,059,270
Total general fund appropriation	\$ 3,095,612
Grand total general fund appropriation S.B. 2015	\$ 16,489,670
Grand total special funds appropriation S.B. 2015	\$ 86,509,804
Grand total all funds appropriation S.B. 2015	\$102,999,474

**SECTION 2. ADDITIONAL INCOME.** All income in excess of estimated income in the budget appropriated by the legislative assembly to the office of management and budget for the biennium beginning July 1, 1995, and ending June 30, 1997, must be deposited in the appropriate operating funds in the state treasury and may only be expended with the authorization of the emergency commission. Income exceeding \$50,000 must be approved by the budget section.

**SECTION 3. LINE ITEM TRANSFERS.** Upon approval of the emergency commission, the director of the office of management and budget may transfer between various line items in subdivisions 1, 2, and 3 of section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

**SECTION 4. CAPITOL BUILDING FUND.** The amount of \$695,879, or so much of the sum as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is to be spent by the facility management division from the capitol building fund during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. FACILITY MANAGEMENT - CAPITAL IMPROVEMENTS.** Of the amount included in the facility management line item in subdivision 1 of section 1 of this Act, \$100,000 is for legislative committee room renovations. The \$100,000 is to be spent by facility management pursuant to legislative council directive and approval.

**SECTION 6. EXEMPTION.** The information services appropriation contained in subdivision 1 of section 1 of chapter 5 of the 1993 Session Laws is not subject to the provisions of section 54-44.1-11 for up to an amount of \$800,000 and any unexpended funds from this appropriation are available for continued development and operating costs of the accounting, management, and payroll systems during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 7. EXEMPTION.** The state radio communications salaries and wages, information services, operating expenses, and equipment appropriation contained in section 1 of chapter 5 of the 1993 Session Laws is not subject to the provisions of North Dakota Century Code section 54-44.1-11, and the unexpended funds from this appropriation shall be available for the installation of radio consoles

and any other costs associated with the installation of the consoles, during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 8. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES.** It is the intent of the fifty-fourth legislative assembly that 1995-97 compensation adjustments for permanent state employees are to be increases of 2.0 percent beginning with the month of July 1995 to be paid in August 1995.

During the second year of the 1995-97 biennium, compensation adjustments for permanent employees of the state are to be increases of 2.0 percent beginning with the month of July 1996 to be paid in August 1996. In addition, the fifty-fourth legislative assembly has appropriated an additional 1.0 percent of salaries for each agency budget. Within the limits of the 1.0 percent appropriation and other available funds, agency and institution directors may make additional compensation adjustments. The additional adjustments may be granted to resolve problems of pay compression, address salary equity concerns, or in recognition of documented levels of performance that exceed standards. The additional increases are to be paid in August 1996.

Probationary employees and employees whose documented performance levels do not meet standards are not eligible for the general or additional increases.

During the biennium, no salary increase other than the 2.0 percent in July 1995 and the 2.0 percent in July 1996 may be given to an employee whose salary exceeds or would exceed the salary range maximum.

**SECTION 9. INTENT - PROGRAM-BASED PERFORMANCE BUDGETING.** It is the intent of the fifty-fourth legislative assembly that the office of management and budget continue the 12 agency program-based performance budgeting pilot project through the 1997-99 biennium. Periodic reports shall be made to the budget section during the 1995-97 biennium of actual to planned expenditures by program and comparisons of planned to actual outcome, output, and efficiency and effectiveness measures. The budget section shall make a recommendation to the fifty-fifth legislative assembly regarding the continuance or expansion of program-based performance budgeting.

**SECTION 10. INTENT.** Within the authority included in subdivision 1 of section 1 of this Act, are the following grants and special items:

Boys and girls clubworks	\$ 53,000
State contingencies	500,000
State memberships	149,000
Firemen's association	63,000
Unemployment insurance	2,000,000
Capitol grounds planning commission	25,000

**SECTION 11. AMENDMENT.** Section 54-16-04.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>7</sup> Section 54-16-04.2 was also amended by section 7 of Senate Bill No. 2032, chapter 507, and section 4 of Senate Bill No. 2288, chapter 508.

54-16-04.2. Commission may authorize acceptance and expenditure of moneys between sessions. The emergency commission, upon the advice of the office of management and budget ~~and within the limits of legislative appropriation for approval under this section,~~ may authorize state agencies, institutions, or departments, between legislative sessions, to receive and accept moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys. The emergency commission may authorize the state agency, institution, or department to expend money received under this section from the date the money becomes available until June thirtieth following the next regular legislative session.

**SECTION 12. AMENDMENT.** Section 54-27.2-02 of the North Dakota Century Code is amended and reenacted as follows:

54-27.2-02. Certain general fund revenues to be deposited in the budget stabilization fund. Notwithstanding any other provision of law except section 54-27.2-01, any amount in the state general fund in excess of ~~forty~~ seventy million dollars at the end of any biennium must be transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

**SECTION 13.** A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

State agency participation in risk management program. Before November 1, 1995, every state agency, institution, and entity employing twenty-five or more full-time equivalent employees shall submit to the bureau for approval a written risk management program under section 65-04-19.1. Before December 1, 1995, the bureau shall review the program and shall inform the state agency, institution, or entity of any change needed to receive the bureau's approval of the program. The state agency, institution, or entity shall make the necessary changes and shall implement the approved program before January 1, 1996. Beginning with the 1996 calendar year, every state agency, institution, and entity that maintains a risk management program approved by the bureau is entitled to a five percent annual premium discount under section 65-04-19.1.

**SECTION 14. AMENDMENT.** Section 4 of Senate Bill No. 2029, as approved by the fifty-fourth legislative assembly, is amended and reenacted as follows:

**SECTION 4. VETERANS' POSTWAR TRUST FUND.** The total special funds appropriation line item in subdivision 4 of section 1 of this Act includes \$81,527, or so much of the sum as may be necessary, from the earnings of the veterans' postwar trust fund.

**SECTION 15. TRANSFER.** During the biennium beginning July 1, 1995, and ending June 30, 1997, the director of the office of management and budget is authorized to transfer special funds to the general fund as follows:

Lands and minerals trust fund	\$ 2,000,000
State aid distribution fund	35,444,748

**SECTION 16. FIRE AND TORNADO FUND.** The amount of \$63,000, or so much of the amount as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the fire and tornado fund.

**SECTION 17. STATEWIDE EMERGENCY COMMUNICATION.** Three hundred eighty thousand dollars of other funds or such other amount that may become available contained in subdivision 4 of section 1 of this Act are to be used by state radio communications for a statewide comprehensive review of state and local emergency communication needs to develop a plan for the program's future.

**SECTION 18. STATE RADIO - 911 SERVICES.** State radio communications shall explore, under the direction of the adjutant general, the feasibility of alternative options for the operation of the 911 system, and determine which state agency should administer state radio communications. To develop these options, the adjutant general shall establish a committee consisting of representatives of the North Dakota sheriffs association, the peace officers association, the highway patrol, the 911 coordinators, the North Dakota association of counties, the North Dakota league of cities, the North Dakota firemen's association, the North Dakota association of emergency medical technicians, and any other members the adjutant general deems appropriate. The committee must also include four members of the legislative assembly chosen by the chairman of the legislative council. Members of the committee are entitled to receive expenses in the amounts provided for state officers and employees. The entity represented is responsible for the expenses of the member representing that entity. The legislative council is responsible for paying the expenses of members of the legislative assembly. The plan should address the provision of 911 services in any county that has 911 service or is establishing 911 service. The plan may also include an option for 911 services to be provided by state radio communications if that option is economically feasible. The adjutant general shall submit the plan to the budget section by August 1996.

State radio communications may add the nine counties that approved, in their November 1994 elections, the 911 services provided by state radio communications, bringing the total number of counties to be served by state radio communications to twenty. No other counties are allowed to join state radio communications until after the fifty-fifth legislative assembly has taken action on the future of 911 services provided by state radio communications.

State radio communications shall charge at least twenty cents per telephone for 911 services provided to political subdivisions. Each county currently receiving 911 services from state radio communications and each of the nine counties to be added shall abide by the standards set forth by the governor's emergency services advisory committee.

**SECTION 19. FEDERAL PROGRAM TERMINATIONS - BLOCK GRANT - FUNDING REDUCTIONS - RELATED PROGRAM REDUCTIONS - REPORTS TO THE BUDGET SECTION.** If the federal government during the 1995-97 biennium terminates funding for any program administered by an agency, department, or institution of the state of North Dakota, the agency, department, or institution, subject to budget section approval, may terminate the program and not replace the reduction in federal funds with state funds, notwithstanding any other provision of law. If the federal government combines funding for separate programs in a block grant resulting in a reduction of total federal funds available for those programs, the administering agency, department, or institution may, subject to budget section approval, prioritize or reprioritize programs as necessary in making programmatic reductions. The agency, department, or institution may administer funds available under a new federal block grant or similar measure, consistent with the terms of that measure, notwithstanding any other provisions of law intended to conform to or implement the provisions of the repealed federal Act, and shall report any program terminations, reductions, or changes resulting from this section to the budget section of the legislative council for its approval.

**SECTION 20. INFORMATION SERVICES DIVISION MAINFRAME COMPUTER ENHANCEMENTS.** During the 1995-97 biennium, the director of the information services division must receive budget section approval for any upgrade or enhancement to the information services division mainframe computer, when the upgrade or enhancement will cost more than \$50,000.

**SECTION 21. RISK MANAGER.** A risk manager shall be appointed by the director of the office of management and budget based on education and experience and shall serve at the pleasure of the director of the office of management and budget.

**SECTION 22. INTENT - COMPENSATED ABSENCES - INTERNAL SERVICE FUNDS.** It is the intent of the fifty-fourth legislative assembly that the office of management and budget prepare and report to the budget section alternative methods of budgeting for the compensation of accrued annual leave and sick leave. The budget section shall determine the method to be used for the preparation of the 1997-99 executive budget. The report shall be presented to the budget section at its first meeting after December 1, 1995.

The state auditor's office shall analyze the financial status, transfer of funds, and activity of internal service funds, revolving funds, and other related funds at each college or university for the fiscal years ending June 30, 1994 and 1995. This analysis may also include pertinent information for months subsequent to fiscal year 1995, if the information is available in time to be analyzed. A report summarizing the results of the analysis will be presented to the budget section after January 1, 1996.

The purpose of this analysis is to present the legislators with information to assist them in deciding whether future legislation related to these funds is necessary.

Colleges and universities must receive approval from the budget section to expend or transfer amounts greater than \$50,000 from the accumulated moneys in these funds except for: (1) mandatory transfers for servicing related debt; and (2) routine operating expenditures associated with the funds.

**SECTION 23. EXPIRATION DATE.** Section 12 of this Act is effective through June 30, 1997, and after that date is ineffective.

**SECTION 24. EMERGENCY.** Section 12 of this Act is declared to be an emergency measure.

Disapproved April 21, 1995  
Filed April 21, 1995

**CHAPTER 38****SENATE BILL NO. 2016**

(Appropriations Committee)

**EMERGENCY MANAGEMENT**

AN ACT to provide an appropriation for defraying the expenses of the division of emergency management.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the division of emergency management under the supervision of the adjutant general for the purpose of defraying its expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$1,630,084
Operating expenses	623,180
Equipment	123,700
Grants	<u>5,880,945</u>
Total all funds	\$8,257,909
Less estimated income	<u>7,959,828</u>
Total general fund appropriation	\$ 298,081

**SECTION 2. STATE HAZARDOUS MATERIAL PREPAREDNESS AND RESPONSE FUND.** The estimated income line item in section 1 of this Act includes \$300,529 from the state hazardous material preparedness and response fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

Approved April 11, 1995

Filed April 12, 1995



**CHAPTER 39****SENATE BILL NO. 2017**

(Appropriations Committee)

**ADJUTANT GENERAL AND VETERANS' CEMETERY**

AN ACT to provide an appropriation for defraying the expenses of the adjutant general and for operation of the North Dakota veterans' cemetery; to provide for a transfer from the veterans' postwar trust fund; to amend and reenact section 54-45-03 of the North Dakota Century Code, relating to the administration of the civil air patrol by the adjutant general; and to provide an effective date.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the adjutant general's office for the purpose of defraying the expenses of the adjutant general's office, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**ADJUTANT GENERAL**

Salaries and wages	\$ 2,753,889
Operating expenses	2,350,464
Equipment	52,800
Capital improvement	25,000
Grants	373,950
Inauguration	1,500
Army guard contract	6,738,800
Tuition and enlistment compensation	1,223,250
Air guard contract	5,082,300
Civil air patrol	92,454
Total all funds	\$18,694,407
Less estimated income	11,502,180
Total general fund appropriation	\$ 7,192,227

**SECTION 2. SPECIAL FUNDS.** The amount of \$330,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act is to be spent from the national guard tuition trust fund for the tuition programs provided for in chapters 37-07.1 and 37-07.2 for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. APPROPRIATION - REPORT TO BUDGET SECTION.** There is hereby appropriated any funds received by the adjutant general from federal and private sources for the purpose of operating the North Dakota veterans' cemetery at or adjacent to Fort Abraham Lincoln state park for the biennium beginning July 1, 1995, and ending June 30, 1997. The adjutant general shall report to the budget section of the legislative council during the 1995-97 biennium on the funds received and spent for the veterans' cemetery.

**SECTION 4. SPECIAL FUNDS.** The amount of \$100,000, or so much of the amount as is necessary, included in the estimated income line item in section 1

of this Act is to be spent from earnings of the veterans' postwar trust fund for the tuition programs provided for in chapters 37-07.1 and 37-07.2 for the biennium beginning July 1, 1995, and ending June 30, 1997. It is the intent that the \$100,000 be used for tuition payments for veterans as defined by section 37-01-40.

**SECTION 5. SPECIAL FUNDS.** The amount of \$130,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act is to be spent from earnings of the veterans' postwar trust fund for the operations and maintenance of the veterans' cemetery for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 6. CONTINGENT TRANSFER - APPROPRIATION.** Notwithstanding the provisions of section 37-14-14, and contingent upon the governor's budget recommendation for the 1997-99 biennium identifying and requesting an appropriation from the veterans' postwar trust fund, there is hereby appropriated and the state treasurer shall transfer as provided by this section the sum of \$2,250,000 from the principal balance of the veterans' postwar trust fund as follows: \$1,000,000 to the adjutant general for deposit in the North Dakota militia foundation for the purpose of establishing a permanent endowment fund for the operations of the veterans' cemetery and \$1,250,000 to the veterans' home for deposit in a permanent endowment fund for the future operations of the veterans' home.

These transfers shall take place immediately after the adjournment of the December 1996 organizational session if the executive budget, as presented by the governor to the legislative assembly during the December 1996 organizational session, identifies and requests any appropriations from the veterans' postwar trust fund. If there are no transfers from the veterans' postwar trust fund in the governor's budget recommendation for the 1997-99 biennium, the transfers authorized in this section shall not take place.

All interest accruing on the transfers in this section from the time of the transfer through June 30, 1997, must be deposited in the veterans' postwar trust fund.

**SECTION 7. AMENDMENT.** Section 54-45-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-45-03. Expenditure of funds - Limitation.** The commanding officer, North Dakota wing, civil air patrol, may expend appropriated grant funds as administered by the ~~aeronautics commission~~ adjutant general. A report of expenditure of grant funds must be issued to the ~~aeronautics commission~~ adjutant general annually. A general fund grant line item must be appropriated within the ~~aeronautics commission's~~ adjutant general's budget. These funds may be expended to support the mission of the civil air patrol as determined by the commanding officer. No funds may be expended for uniforms or personal equipment of any member of the civil air patrol. All state equipment on inventory with the civil air patrol on July 7, 1991, and related to the mission of the civil air patrol must be transferred to the North Dakota wing of the civil air patrol.

**SECTION 8. EFFECTIVE DATE.** Sections 4, 5, and 6 of this Act are effective on December 31, 1995.

Disapproved April 21, 1995  
Filed April 21, 1995

**CHAPTER 40****SENATE BILL NO. 2018**

(Appropriations Committee)

**HOMESTEAD TAX CREDIT**

AN ACT to provide an appropriation to the tax commissioner for payment of state reimbursement under the homestead tax credit.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the tax commissioner for the purpose of paying the state reimbursement under the homestead tax credit, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Grants	<u>\$5,181,250</u>
Total all funds	<u>\$5,181,250</u>
Less estimated income	<u>500,000</u>
Total general fund appropriation	<u>\$4,681,250</u>

**SECTION 2. ESTIMATED INCOME - TRANSFER.** The estimated income line item in section 1 of this Act includes \$500,000 from the housing finance agency reserves. Moneys shall be transferred upon order of the industrial commission to the state tax commissioner's office when it determines the transfer is necessary for the state tax commissioner to make the homestead tax credit payments.

Approved March 29, 1995

Filed March 29, 1995

**CHAPTER 41****SENATE BILL NO. 2019**  
(Appropriations Committee)**STATE AID DISTRIBUTION FUND**

AN ACT making an appropriation for the distribution of state aid distribution fund revenue to political subdivisions of the state of North Dakota; and to provide a statement of legislative intent.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, to the state treasurer of the state of North Dakota for the purpose of distributing state aid distribution fund revenue to political subdivisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Grants	<u>\$51,500,000</u>
Total state aid distribution fund appropriation	<u>\$51,500,000</u>

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that if the amount appropriated in this Act, plus any amount transferred to the general fund pursuant to legislative authorization, is less than the amount deposited in the state aid distribution fund during the 1995-97 biennium, the legislative assembly shall provide a deficiency appropriation to local political subdivisions of the excess amount deposited and that the deficiency appropriation be for the 1995-97 biennium, and not be considered in appropriations for the 1997-99 biennium.

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 42**  
**SENATE BILL NO. 2020**  
(Appropriations Committee)  
**SEED DEPARTMENT**

AN ACT making an appropriation for defraying the expenses of the state seed department.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from income, to the state seed department for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$2,882,830
Operating expenses	994,810
Equipment	65,900
Capital improvements	350,000
Grants	200,000
Contingency	<u>100,000</u>
Total appropriation from seed department fund	\$4,593,540

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 43****SENATE BILL NO. 2021**  
(Appropriations Committee)**GAME AND FISH DEPARTMENT**

AN ACT making an appropriation for defraying the expenses of the state game and fish department.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state game and fish department for the purpose of defraying the expenses of the various divisions of the department, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$10,322,211
Operating expenses	6,800,845
Equipment	594,400
Capital improvements	979,700
Grants	1,866,500
Noxious weed control	200,000
Land habitat and deer depredation	900,000
Wildlife habitat	650,000
Small and big game restoration trust	200,000
Grants, gifts, and donations	100,000
Nongame wildlife	120,000
Lonetree reservoir	770,000
Total special funds appropriation	<u>\$23,503,656</u>

**SECTION 2. HABITAT RESTORATION.** The amount of \$650,000, or such lesser amount as may be available, for the line item entitled wildlife habitat in section 1 of this Act, is from the habitat restoration stamp program fund, to lease privately owned lands for wildlife habitat to reestablish wildlife population for the biennium beginning July 1, 1995, and ending June 30, 1997. These funds may be spent only for the purposes and using guidelines contained in section 20.1-03-12.1.

**SECTION 3. LAND HABITAT AND DEER DEPREDACTION.** The amount of \$900,000, or such lesser amount as may be available, for the line item entitled land habitat and deer depredation in section 1 of this Act, is from the private land habitat improvement fund to improve wildlife habitat on private land and alleviate depredation as provided in section 20.1-02-05 for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 4. NONGAME WILDLIFE.** The amount of \$45,000, or such lesser amount as may be available, for the line entitled nongame wildlife in section 1 of this Act, is from the nongame wildlife fund for the purpose of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. SMALL AND BIG GAME RESTORATION FUND.** The amount of \$200,000, or such lesser amount as may be available, for the line item entitled small and big game restoration trust in section 1 of this Act, is from the small and big game restoration trust fund to improve wildlife habitat on private land for the biennium beginning July 1, 1995, and ending June 30, 1997.

Approved April 5, 1995

Filed April 5, 1995

**CHAPTER 44****SENATE BILL NO. 2022**

(Appropriations Committee)

**HISTORICAL SOCIETY**

AN ACT to provide an appropriation for defraying the expenses of the state historical society; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state historical society for the purpose of defraying the expenses of its divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$3,782,452
Operating expenses	782,076
Equipment	74,644
Capital improvements	311,707
Grants	485,559
Yellowstone-Missouri-Fort Union Commission	4,977
International peace garden	<u>547,583</u>
Total all funds	\$5,988,998
Less estimated income	<u>1,000,099</u>
Total general fund appropriation	\$4,988,899

**SECTION 2. FUNDING - INTERNATIONAL PEACE GARDEN.** The superintendent of the state historical society shall transfer fifty percent of the amount appropriated in the international peace garden line item in section 1 of this Act to the international peace garden within ten days of July 1, 1995, and transfer the remaining fifty percent within ten days of July 1, 1996. The state historical society may not reduce the funds appropriated for the international peace garden in section 1 of this Act by a percentage greater than any percentage allotment of general fund moneys required of the department pursuant to the provisions of sections 54-44.1-12 and 54-44.1-13.1.

**SECTION 3. STORAGE FACILITY APPROPRIATION - LIMITED USE.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$147,586, or so much of the sum as may be necessary, to the state historical society for the purpose of purchasing and renovating the building located at 6117 east main in Bismarck for use as a historical society storage facility for the biennium beginning with the effective date of this Act and ending June 30, 1997. The historical society may use only the ground floor of the building for storage space needs of the historical society unless the budget section determines additional space in the building may also be used by the historical society.

**SECTION 4. FACILITY MANAGEMENT SPACE UTILIZATION STUDY.** The office of management and budget, for the biennium beginning July 1, 1995, and ending June 30, 1997, shall conduct a space utilization study to provide



recommendations on the most efficient use of the second floor of the building purchased by the state historical society located at 6117 east main in Bismarck. The study must include an analysis of storage space needs of the state historical society and other state agencies and office space needs of state agencies. The office of management and budget shall report its findings and recommendations for the use of the second floor of the building to the budget section by July 1, 1996, and the budget section shall make a determination regarding the use of the second floor of the building.

**SECTION 5. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved April 5, 1995

Filed April 5, 1995

**CHAPTER 45****SENATE BILL NO. 2023**

(Appropriations Committee)

**PARKS AND RECREATION DEPARTMENT**

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the parks and recreation department for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Administration	\$1,258,946
Planning and development	3,962,252
Prairie rose state games	173,997
Parks	<u>4,140,738</u>
Total all funds	<u>\$9,535,933</u>
Less estimated income	<u>4,189,963</u>
Total general fund appropriation	<u>\$5,345,970</u>

**SECTION 2. SNOWMOBILE FUND.** The amount of \$240,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act, is from the snowmobile fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. TRAIL TAX TRANSFER FUND.** The amount of \$10,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act, is from the trail tax transfer fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 4. ADDITIONAL INCOME.** All income of the parks and recreation department in excess of the estimated income appropriated in section 1 of this Act is hereby appropriated to the parks and recreation department for the biennium beginning July 1, 1995, and ending June 30, 1997, and may be spent only upon authorization of the emergency commission.

**SECTION 5. LINE ITEM TRANSFERS.** Upon approval of the emergency commission, the parks and recreation department may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 46****SENATE BILL NO. 2024**

(Appropriations Committee)

**TOURISM DEPARTMENT**

AN ACT to provide an appropriation for defraying the expenses of the tourism department.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the tourism department for the purpose of defraying the expenses of the tourism department for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$ 812,409
Operating expenses	3,244,393
Equipment	15,378
Grants	<u>60,000</u>
Total all funds	\$4,132,180
Less estimated income	<u>180,000</u>
Total general fund appropriation	\$3,952,180

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 47****SENATE BILL NO. 2025**

(Appropriations Committee)

**WATER COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the various divisions of the state water commission; to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to allocation of oil extraction tax revenues; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions of the state water commission for the purpose of defraying the expenses of the various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$ 7,334,014
Operating expenses	7,980,704
Equipment	151,750
Capital improvements	15,686,732
Grants	6,985,220
Cooperative research	3,050,000
Total all funds	\$41,188,420
Less estimated income	35,730,793
Total general fund appropriation	\$ 5,457,627

**SECTION 2. RESOURCES TRUST FUND.** The amount of \$9,296,181, or so much of the funds as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is from the resources trust fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 3. ALLOCATION OF GRANT FUNDS.** The funds appropriated in the grants line item in section 1 of this Act must be disbursed by the state water commission in accordance with section 61-02-64.1.

**SECTION 4. GRANTS.** Section 54-44.1-11 does not apply to appropriations made for grants in this Act. However, this exclusion is only in effect for the two-year period after June 30, 1997. Any unexpended funds after that period has expired must be transferred to the resources trust fund.

**SECTION 5. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT.** If the resources trust fund 1995-97 revenues are in excess of \$9,296,181, any excess is hereby appropriated, subject to emergency commission approval, from the resources trust fund to the state water commission for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 6. WATER USE FUND.** The estimated income line item included in section 1 of this Act includes \$30,000 that the state water commission may spend from the water use fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 7. SOUTHWEST PIPELINE OPERATION AND MAINTENANCE FUND.** The estimated income line item included in section 1 of this Act includes \$2,041,879 that the state water commission may spend from the southwest pipeline operation and maintenance fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**§ SECTION 8. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07. Allocation of moneys in oil extraction tax development fund.** Moneys deposited in the oil extraction tax development fund must be apportioned quarterly by the state treasurer as follows:

1. ~~For~~ Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds, must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
  - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
2. Ninety ~~Twenty~~ percent must be allocated as provided in article X, section 24, of the Constitution of North Dakota.
3. Sixty percent must be allocated and credited to the state's general fund for general state purposes.

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<sup>8</sup> Section 57-51.1-07 was also amended by section 1 of Senate Bill No. 2330, chapter 581.

**SECTION 9. EFFECTIVE DATE - EXPIRATION DATE.** Section 8 of this Act is effective for tax revenue from oil produced after June 30, 1995, and before July 1, 1997, and section 8 is ineffective for tax revenue from oil produced after June 30, 1997.

Approved April 5, 1995

Filed April 5, 1995

**CHAPTER 48****SENATE BILL NO. 2026**

(Appropriations Committee)

**AGRICULTURAL PRODUCTS UTILIZATION  
COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the agricultural products utilization commission and for ethanol production incentives; and to amend and reenact section 4-14.1-06 of the North Dakota Century Code, relating to administrative expenses of the agricultural products utilization commission.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the agricultural products utilization commission for the purpose of defraying the expenses of the agricultural products utilization commission, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$ 127,839
Operating expenses	98,826
Equipment	3,350
Grants	2,452,395
Ethanol incentive	3,000,000
Total all funds	\$5,682,410
Less estimated income	4,565,024
Total general fund appropriation	\$1,117,386

**SECTION 2. APPROPRIATION.** All income received in excess of the amounts appropriated in section 1 of this Act is hereby appropriated to the agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 1995, and ending June 30, 1997. Any funds received require the approval of the emergency commission before they may be expended.

**SECTION 3. AGRICULTURAL FUEL TAX FUND.** The estimated income line item in section 1 of this Act includes \$1,058,024 from the agricultural fuel tax fund for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 4. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION INCENTIVES.** The estimated income line item in section 1 of this Act includes \$3,007,000, or so much of the amount as may be necessary, from the highway tax distribution fund for the ethanol production incentive program. Of this amount, \$3,000,000 is for the purpose of providing production incentives to North Dakota ethanol plants and \$7,000 is for audits of the use of these funds for the biennium beginning July 1, 1995, and ending June 30, 1997. Distribution from the appropriation in section 1 of this Act to the producers of agriculturally derived fuel must be at the rate of forty cents for each gallon of agriculturally derived fuel produced in the state that is marketed by the producing plant to a distributor or

wholesaler for sale within North Dakota. For purposes of this section "gallon of agriculturally derived fuel" means a gallon of fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added. Payment to the producing plant must be approved by the agricultural products utilization commission upon presentation by the plant of an affidavit to the effect that the ethanol sold from the plant and for which the producers credit is being sought is to be sold at retail to consumers in North Dakota. The affidavit of the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. If any ethanol plant that did not receive production incentives during the fiscal year ending June 30, 1995, is eligible for production incentives on July 1, 1996, for the fiscal year ending June 30, 1997, incentive payments, only fifty percent of the authorized production incentives, up to a total of \$250,000, may be provided to an ethanol plant that produced fifteen million gallons or more of ethanol in the previous fiscal year. Within ninety days after the end of each fiscal year of the ethanol plant beginning after December 31, 1992, any North Dakota ethanol plant receiving production incentives from the state shall file with the budget section of the legislative council a statement, certified by a certified public accountant, as to whether or not the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received from this incentive program.

**SECTION 5. EXEMPTION.** The funds appropriated in the grants line item in section 1 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item may be available for continued payment of grants awarded but not paid during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 6. AMENDMENT.** Section 4-14.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-14.1-06. Agricultural products utilization commission - Administrative expenses.** Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of needed personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds provided to the commission ~~for grants~~ each biennium excluding federal funds.

Approved April 5, 1995  
Filed April 5, 1995



**CHAPTER 49****SENATE BILL NO. 2027**

(Appropriations Committee)

**WORKERS COMPENSATION BUREAU**

AN ACT to provide an appropriation for defraying the expenses of the workers compensation bureau and its divisions; to provide for an electronic reporting system; and to provide authorization to expend funds from the workers' compensation contingency line item.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from the workers' compensation fund in the state treasury, not otherwise appropriated, to the workers compensation bureau for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$10,841,136
Operating expenses	6,411,716
Equipment	1,000,625
Managed care/TPA	1,460,250
Information reengineering	1,979,166
Other states coverage	50,000
Contingencies	250,000
Civil air patrol payment	11,259
Total all funds	<u>\$22,004,152</u>
Less estimated income	<u>21,992,893</u>
Total general fund appropriation	\$ 11,259

**SECTION 2. WORKERS' COMPENSATION CONTINGENCY - EMERGENCY COMMISSION APPROVAL REQUIRED.** The sums appropriated in section 1 of this Act for the workers' compensation contingency line item for the biennium beginning July 1, 1995, and ending June 30, 1997, may be spent only upon authorization of the emergency commission.

**SECTION 3. REPORT TO BUDGET SECTION.** The workers compensation bureau is to report on the expenditure of the \$350,000 provided for critical salary adjustments to the budget section at its June 1996 meeting.

**SECTION 4. ELECTRONIC REPORTING.** Job service North Dakota and the workers compensation bureau are to develop an employer wage reporting system that will allow for the electronic submission of employer wage information. The system is to have a common reporting form and allow for magnetic or electronic transmission of the wage information on either five and one-quarter inch or three and one-half inch DOS formatted diskettes, through asynchronous communications, or any other method of transmission deemed appropriate. The new reporting system is to be available to employers by January 1, 1997. Any state agency that wishes to participate in the development of the wage reporting system may do so.

Approved March 31, 1995

Filed April 3, 1995

**CHAPTER 50****SENATE BILL NO. 2028**

(Appropriations Committee)

**RETIREMENT AND INVESTMENT AGENCIES**

AN ACT to provide an appropriation for defraying the expenses of various state retirement and investment agencies.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys from special funds derived from income, to the retirement and investment agencies listed in this section for the purpose of defraying their expenses, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

**Subdivision 1.**

**RETIREMENT AND INVESTMENT OFFICE**

Salaries and wages	\$1,490,587
Operating expenses	896,720
Equipment	36,619
Contingency	<u>100,000</u>
Total special funds appropriation	\$2,523,926

**Subdivision 2.**

**PUBLIC EMPLOYEES RETIREMENT SYSTEM**

Salaries and wages	\$1,482,320
Operating expenses	1,030,956
Equipment	26,280
Contingency	<u>40,000</u>
Total special funds appropriation	\$2,579,556
Grand total special funds appropriation S.B. 2028	\$5,130,482

**SECTION 2. INTENT.** It is the intent of the fifty-fourth legislative assembly that the state investment board, teachers' fund for retirement board, and public employees retirement board study methods to reorganize the public employees retirement system and the retirement and investment office to achieve cost reductions in the administration of the programs under the control of the respective boards. Representatives of the state investment board, teachers' fund for retirement board, and public employees retirement board shall report their findings to the interim employee benefits programs committee of the legislative council no later than April 1, 1996.

Approved April 5, 1995  
Filed April 5, 1995

## CHAPTER 51

### SENATE BILL NO. 2029 (Appropriations Committee)

## STATE OFFICIALS AND INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various state departments and institutions; to direct the attorney general to not spend certain funds appropriated for the 1993-95 biennium; to provide for a transfer of Bank of North Dakota profits; to amend and reenact section 21 of chapter 1 of the 1993 Session Laws, relating to state employee defense costs; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, the sums as hereinafter provided or so much of the sums as may be necessary. These sums increase the general fund and special funds appropriation authority enacted by the fifty-third legislative assembly to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses, for the period beginning January 1, 1995, and ending June 30, 1995, as follows:

#### Subdivision 1.

##### OFFICE OF MANAGEMENT AND BUDGET

Salaries and wages	\$ 25,000
Total general fund appropriation	\$ 25,000

#### Subdivision 2.

##### OFFICE OF ADMINISTRATIVE HEARINGS

Operating expenses	\$ 59,000
Total general fund appropriation	\$ 59,000

#### Subdivision 3.

##### NORTH DAKOTA STATE UNIVERSITY - BOTTINEAU

Capital improvements	\$ 42,000
Total general fund appropriation	\$ 42,000

#### Subdivision 4.

##### NORTH DAKOTA VETERANS' HOME

Salaries and wages	\$ 81,527
Total special funds appropriation	\$ 81,527

#### Subdivision 5.

##### DIVISION OF EMERGENCY MANAGEMENT

Operating expenses	\$ 400,000
Total general fund appropriation	\$ 400,000
Grand total general fund appropriation S.B. 2029	\$ 526,000
Grand total special funds appropriation S.B. 2029	\$2,081,527
Grand total all funds appropriation S.B. 2029	\$2,607,527

**SECTION 2. ATTORNEY GENERAL DIRECTIVE.** The attorney general is directed to not spend \$139,000 from the general fund appropriated to the attorney general for the 1993-95 biennium but which should have been appropriated to the office of administrative hearings for 1993-95 administrative hearings costs.

**SECTION 3. BANK OF NORTH DAKOTA PROFITS - TRANSFER TO PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION FUND - APPROPRIATION.** The industrial commission is authorized, during the period beginning January 1, 1995, and ending June 30, 1995, to transfer \$2,000,000, or so much of the sum as may be necessary, of accumulated and undivided profits of the Bank of North Dakota to the partnership in assisting community expansion fund which is hereby appropriated for the purpose of funding project applications under the program for the period beginning January 1, 1995, and ending June 30, 1995.

**SECTION 4. VETERANS' POSTWAR TRUST FUND.** The total special funds appropriation line item in subdivision 4 of section 1 of this Act includes \$81,527, or so much of the sum as may be necessary, from the veterans' postwar trust fund.

**SECTION 5. AMENDMENT.** Section 21 of chapter 1 of the 1993 Session Laws is amended and reenacted as follows:

**SECTION 21. BONDING FUND - ATTORNEY GENERAL.** The appropriation in subdivision 3 of section 1 of this Act includes up to \$250,000, or so much of the sum as may be necessary, from the state bonding fund to the attorney general for the purpose of providing state employee defense services pursuant to section 26.1-21-10.2. The emergency commission, notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1993, and ending June 30, 1995, to approve the expenditure of the funds from the state bonding fund appropriated in subdivision 3 of section 1 of this Act to the extent necessary and based upon applications by the attorney general. ~~Funds expended by the attorney general for state employee defense must be reimbursed to the state bonding fund through deficiency appropriation and the attorney general shall report to the budget section of the legislative council the amount of any deficiency appropriation that may be introduced to the fifty-fourth legislative assembly.~~

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 11, 1995

Filed April 12, 1995

**CHAPTER 52****SENATE BILL NO. 2030**

(Appropriations Committee)

**CAPITAL IMPROVEMENTS**

AN ACT to provide an appropriation for capital projects of various state departments and institutions; to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds for capital projects; to authorize the industrial commission to issue and sell bonds for capital projects; to amend and reenact section 54-17.2-23 of the North Dakota Century Code, relating to the limitation on state building authority lease payments; and to provide guidelines on the contents of future capital construction bills.

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

**SECTION 1. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - PURPOSES.** The state board of higher education, in accordance with chapter 15-55, may issue and sell self-liquidating, tax-exempt bonds in an amount not exceeding \$4,430,000, for the purpose of capital projects at institutions under the control of the board, including an amount not exceeding \$430,000 for a parking lot at Bismarck state college and \$4,000,000 for campus networking at the institutions of higher education. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

Bonds for campus networking may only be issued after the board of higher education has approved a student technology fee. The use of income generated through a student technology fee is not limited to campus networking; however, the technology fee income may be the only source of funds used for the retirement of bonds issued for campus networking.

Based upon campus master plans, updated cost estimates, and a study that includes projected technology fee income by campus, the board shall determine the necessary amount of revenue bonds to be issued by campus. The total issue for networking may not exceed \$4,000,000 for the university system. The technology fee paid by students at a campus may only be used for networking or technology purposes at that campus.

**SECTION 2. USE OF PROCEEDS - APPROPRIATION.** The proceeds resulting from the sale of bonds authorized under section 1, or so much of the sum as may be necessary, are hereby appropriated for a parking lot at Bismarck state college, in the amount of \$430,000, and for campus networking, in the amount of \$4,000,000.

Any unexpended balance from the sale of bonds must be placed in a sinking fund for the retirement of the authorized bonds.

**SECTION 3. PROJECT AUTHORIZATIONS.** The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, hereby declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, during the biennium beginning July 1, 1995, and ending June 30, 1997. The

proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 1995, and ending June 30, 1997, for the following projects:

Bismarck state college	Science and mathematics center	\$8,060,000
University of North Dakota	Abbott hall	2,371,769
North Dakota state university	Power plant	2,145,000
Dickinson state university	Klinefelter hall	2,750,000

The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 1997. This authority of the industrial commission to issue evidences of indebtedness ends June 30, 1997, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

The university of North Dakota may obtain and utilize federal funds to assist in remodeling Abbott hall at the university of North Dakota. There is hereby appropriated to the university of North Dakota the sum of \$1,771,769, or so much of the sum as may be necessary, from any federal or other funds that may become available for this project for the biennium beginning July 1, 1995, and ending June 30, 1997.

Grand total special funds appropriation \$21,528,538

**SECTION 4. BOND ISSUANCE REPAYMENT RESPONSIBILITY.** Of the total amount of evidences of indebtedness issued under the provisions of section 3 of this Act, a total of \$2,206,769 must be available from nongeneral fund sources to assist in the retirement of the evidences of indebtedness, issued for the project costs associated with construction of the projects authorized by this Act:

Bismarck state college project	\$1,060,000
University of North Dakota project	871,769
Dickinson state university project	275,000

Payments must be made in six equal annual installments beginning after fiscal year 1997. Prepayment may be made on any or all of these amounts. Such payments of local matching amounts must be deposited in a special industrial commission account from which the industrial commission, acting as the North Dakota building authority, shall use the funds in making principal and interest payments.

**SECTION 5. AMENDMENT.** Section 54-17.2-23 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-23. State building authority lease payments - Limitation.** The general fund amount of lease payments for a biennium associated with capital construction projects financed by the industrial commission acting as the state building authority may not exceed the amount equal to a portion of sales, use, and motor vehicle excise tax collections equal to ~~twelve and one-half~~ eleven percent of an amount, determined by multiplying the quotient of one percent divided by the general sales tax rate that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3.

**SECTION 6. CONTENTS OF CAPITAL CONSTRUCTION BILL.** The office of management and budget shall continue to prepare capital construction budgets and a capital construction bill. All future capital construction bills may only include projects involving bonding. All other capital projects funded with general fund moneys or special funds must be included in the appropriate agency's appropriation bill.

Approved April 3, 1995

Filed April 3, 1995



**CHAPTER 53****SENATE BILL NO. 2475**

(Senator Sand)  
(Representative Coats)

**VETERANS' ADJUSTED COMPENSATION**

AN ACT providing an appropriation for adjusted compensation to certain veterans; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is hereby appropriated out of any interest earnings of the veterans' postwar trust fund in the state treasury, not otherwise appropriated, the sum of \$60,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of completing bonus payments to the remaining eligible veterans under section 37-27-02, for the period beginning with the effective date of this Act and ending June 30, 1997.

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

Approved April 11, 1995  
Filed April 12, 1995

# GENERAL PROVISIONS

## CHAPTER 54

### SENATE BILL NO. 2070

(Legislative Council)

(Interim Judiciary Committee)

(Representatives Brown, Coats, Kretschmar)

## TECHNICAL CORRECTIONS ACT

AN ACT to create and enact section 54-34.4-04 of the North Dakota Century Code, relating to correction of the statutory placement of the motion picture development office; to amend and reenact subsection 17 of section 10-19.1-26, subsection 2 of section 10-19.1-50, section 10-19.1-105, subsection 3 of section 10-19.1-116, sections 11-04-07, 15-05-16, 15-38.1-05, subsection 1 of section 15-62.2-01, subsection 6 of section 15-62.3-01, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subsection 4 of section 19-14-03, sections 20.1-02-16.3, 20.1-03-12.1, 21-03-38, subsection 6 of section 23-02.1-20, subsection 13 of section 23-17.2-02, subsection 2 of section 26.1-03-17, subsection 6 of section 26.1-06.1-11, subsection 5 of section 26.1-19-03, sections 26.1-34.1-05, 31-01-16, subdivision d of subsection 3 of section 32-07.1-01, sections 32-19-41, 32-19.1-01, subsection 3 of section 37-15-14.1, sections 37-18.1-01, 39-06-43, subsection 3 of section 41-01-11, subsection 1 of section 41-02.1-76, subsection 1 of section 41-02.1-77, subsection 3 of section 41-03-60, subsection 1 of section 41-09-16, subsection 1 of section 41-09-19, subdivision f of subsection 1 of section 41-09-23, sections 44-11-04, 44-11-07, 48-05-06, 53-09-10, 54-03-25, 54-16-04, subdivision a of subsection 1 of section 54-52-17.4, and section 64-02-20 of the North Dakota Century Code, relating to improper, inaccurate, redundant, missing, or obsolete references; and to repeal chapter 11-02 and sections 4-05.1-14, 27-01-06, and 55-08-01.7 of the North Dakota Century Code, relating to elimination of obsolete provisions for formation of counties from unorganized territory, elimination of an obsolete reference to the Mandan experiment station, elimination of an obsolete provision for trial expense payments by counties, and elimination of an incorrect statutory placement of the motion picture development office.

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

<sup>9</sup> **SECTION 1. AMENDMENT.** Subsection 17 of section 10-19.1-26 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided

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<sup>9</sup> Section 10-19.1-26 was also amended by section 11 of Senate Bill No. 2343, chapter 103.

in ~~sections~~ section 10-19.1-48 ~~and 10-19.1-49~~ and fix their compensation.

**SECTION 2. AMENDMENT.** Subsection 2 of section 10-19.1-50 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
  - a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
  - b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or
  - c. A committee of the board upon which the director does not serve, duly established in accordance with ~~sections~~ section 10-19.1-48 ~~and 10-19.1-49~~ as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

**SECTION 3. AMENDMENT.** Section 10-19.1-105 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-105. Methods of dissolution.** A corporation may be dissolved:

1. By the incorporators pursuant to section 10-19.1-106;
2. By the shareholders pursuant to sections 10-19.1-107 through ~~10-19.1-113~~ 10-19.1-113.1; or
3. By order of a court pursuant to sections 10-19.1-114 through 10-19.1-122.

**SECTION 4. AMENDMENT.** Subsection 3 of section 10-19.1-116 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge ~~or~~ of:
  - a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;
  - b. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
  - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

- d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
- e. Other claims duly proved and allowed.

**SECTION 5. AMENDMENT.** Section 11-04-07 of the North Dakota Century Code is amended and reenacted as follows:

**11-04-07. Form of ballot on county seat removal.** The ballot to be used at an election for the removal of a county seat ~~shall~~ must be in ~~substantially the following~~ a form:

Shall the county seat of \_\_\_\_\_ County be removed from  
\_\_\_\_\_ to \_\_\_\_\_?  
  
Yes ☐  
No ☐

that will allow an elector to vote for the existing county seat or a place in the county named in the petition under section 11-04-04.

**SECTION 6. AMENDMENT.** Section 15-05-16 of the North Dakota Century Code is amended and reenacted as follows:

**15-05-16. Reports - State geologist - State ~~chemist~~ department of health and consolidated laboratories.** The state geologist or the state ~~food commissioner and chemist department of health and consolidated laboratories~~, on the request of the board of university and school lands, shall visit any land leased under ~~the provisions~~ of section 15-05-09 and shall make a report ~~thereon~~ of the visit to the board. The state geologist or the state ~~food commissioner and chemist department of health and consolidated laboratories~~ may not receive a fee for making the examination and report but must be paid ~~his~~ necessary expenses incurred in connection therewith.

**SECTION 7. AMENDMENT.** Section 15-38.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-38.1-05. Powers of the commission.** The commission ~~has the power to~~ may adopt its own rules ~~and regulations~~. In addition to other powers authorized by law and under this chapter, the members of the commission and any factfinder appointed by it, ~~shall have~~, in the performance of their duties, ~~have~~ the powers contained in sections 28-32-09, ~~28-32-10~~, 28-32-11, and 28-32-12.

**SECTION 8. AMENDMENT.** Subsection 1 of section 15-62.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Resident undergraduate students pursuant to section ~~15-10-19~~ 15-10-19.1.

**SECTION 9. AMENDMENT.** Subsection 6 of section 15-62.3-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Full-time resident student" means a North Dakota resident, pursuant to section ~~15-10-19~~ 15-10-19.1, who is enrolled at an accredited private

institution in a course of study including at least one hundred eighty instructional hours per semester.

**SECTION 10. AMENDMENT.** Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection ~~3~~ 6 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

<sup>10</sup> **SECTION 11. AMENDMENT.** Subsection 4 of section 19-14-03 of the North Dakota Century Code is amended and reenacted as follows:

4. Which does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
  - a. The common name in English of all active ingredients in the order of their predominance in the product;
  - b. A statement of the actual percentage or relative amounts of each ingredient active and inert. In the case of certain products (such as coated medicinal tablets), it may be impractical to state the quantity or proportion of inert ingredients and exemptions must be established by ~~regulations issued~~ rules adopted by the food commissioner and chemist department of health and consolidated laboratories;
  - c. The net contents, by weight, measure, or numerical count of such package;
  - d. The name and principal address of the manufacturer or person responsible for placing such livestock medicine on the market; and
  - e. Complete and explicit directions for use of such medicine.

**SECTION 12. AMENDMENT.** Section 20.1-02-16.3 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-16.3. Small and big game habitat restoration trust fund - Advisory committee - Transfer - Continuing appropriation.** The small and big game habitat restoration trust fund is established to further farmer-sportsmen relations and to enhance small and big game habitat by providing funds for the leasing of private land to establish or preserve small and big game habitat, food plot development, and to carry out a private land habitat improvement program by entering into cost-sharing agreements with landowners or agencies working on private land to help defray all or a portion of their share of certain federally sponsored conservation practices considered especially beneficial to small and big game. No more than forty acres [~~64-76~~ 16.19 hectares] per owner or operator may be leased under this

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<sup>10</sup> Section 19-14-03 was also amended by section 14 of Senate Bill No. 2075, chapter 219.

program. No land may be purchased with small and big game habitat restoration trust fund moneys, and no funds may be used for administrative purposes. The private land habitat improvement program advisory committee shall advise the director concerning expenditures from the small and big game habitat restoration trust fund. The director shall provide staff services to the advisory committee. All members of the advisory committee must be residents of this state and must serve without remuneration. The amount of one hundred thousand dollars must be transferred annually from the game and fish operating fund to the small and big game habitat restoration trust fund. The interest earned by moneys contained in the small and big game habitat restoration trust fund is hereby appropriated as a standing and continuing appropriation for the purposes of this section.

**SECTION 13. AMENDMENT.** Section 20.1-03-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-03-12.1. Habitat restoration stamp required - Use of revenue - No land purchases allowed.** A habitat restoration stamp is required for every resident and nonresident general game license for which a stamp fee of three dollars must be charged. The habitat restoration stamp fee is in addition to the annual general game license fee charged pursuant to under section 20.1-03-12. No land may be purchased with habitat restoration stamp moneys. All moneys generated by the habitat restoration stamp program, including the habitat restoration stamp print, the interest earned on the habitat restoration stamp program, the interest earned on any unspent habitat restoration stamp program funds, and any and all other moneys resulting from the habitat restoration stamp program must be placed in the habitat restoration stamp fund and are intended to provide a fund to lease privately owned lands for wildlife habitat. Not more than ten percent of this fund may be used for administrative purposes. All other moneys generated by the habitat restoration stamp program must be used for lease payments. Any moneys generated by the habitat restoration stamp program and not expended during a biennium must be expended for the same purposes during the next biennium. Any land needed for reestablishing the wildlife population and habitat may be leased for periods up to six years, but no more than forty acres [~~16.18~~ 16.19 hectares] in any section [259.00 hectares] of land may be leased for these purposes. Hunting may not be prohibited on these lands. In those judicial districts encompassing the historically prime pheasant range, as determined by the director, fifty percent of the expenditures within that judicial district must be for pheasant restoration and enhancement.

**SECTION 14. AMENDMENT.** Section 21-03-38 of the North Dakota Century Code is amended and reenacted as follows:

**21-03-38. Bond proceeds - Kept in separate fund - Protection of purchaser.** All borrowed money must be paid into the treasury of the municipality borrowing it, must be kept there until used, in a fund separate and distinct from all other funds, to be used for the purpose for which it was borrowed and for no other purpose except that such funds may be temporarily invested in securities as are approved by the governing board in accordance with the provisions of section 21-03-43 and as otherwise provided by section 21-03-42, and may be withdrawn only upon order or warrants made payable out of said fund and expressing the purpose for which they were drawn. The purchaser of any bonds issued pursuant to this chapter is not obliged to see to the application of the purchase price thereof, but is protected fully in paying for such bonds by the receipt of the county treasurer or of the officer delivering such bonds ~~as provided by section 21-03-22~~. Income from the temporary investing of receipts from bond issues must be available for use for such purpose as such bond issue was approved or upon resolution of the governing body of the municipality, must be paid into the sinking fund for use in payment of bonds issued.

<sup>11</sup> **SECTION 15. AMENDMENT.** Subsection 6 of section 23-02.1-20 of the North Dakota Century Code is amended and reenacted as follows:

6. The provision for entering the name of the father of the fetus on the fetal death certificate and the reporting of out of wedlock fetal deaths concur exactly with those set forth in ~~subdivisions a through e of subsection 4~~ subsections 4 through 7 of section 23-02.1-13.

<sup>12</sup> **SECTION 16. AMENDMENT.** Subsection 13 of section 23-17.2-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. "Long-term care facility" means any nursing facility as defined in 42 U.S.C. 1396r(a), or basic care facility as defined in section 23-09.3-01. The term does not include a facility, as defined by subsection 2 of section ~~25-01.2-02~~ 25-01.2-01, which provides services to developmentally disabled persons.

<sup>13</sup> **SECTION 17. AMENDMENT.** Subsection 2 of section 26.1-03-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, ~~26.1-03-19 through 26.1-03-19.6~~, 26.1-03-22, 26.1-17-32, and 26.1-18-27, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

**SECTION 18. AMENDMENT.** Subsection 6 of section 26.1-06.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. After demand by the commissioner pursuant to ~~the provisions of~~ sections ~~26.1-03-19~~ 26.1-03-19.1 through ~~26.1-03-21~~ 26.1-03-19.7, or

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<sup>11</sup> Section 23-02.1-20 was also amended by section 2 of House Bill No. 1058, chapter 243.

<sup>12</sup> Section 23-17.2-02 was also amended by section 2 of House Bill No. 1058, chapter 243, and repealed by section 6 of Senate Bill No. 2460, chapter 254.

<sup>13</sup> Section 26.1-03-17 was also amended by section 2 of Senate Bill No. 2176, chapter 213.

pursuant to ~~the provisions~~ of this chapter, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer.

**SECTION 19. AMENDMENT.** Subsection 5 of section 26.1-19-03 of the North Dakota Century Code is amended and reenacted as follows:

5. Employee welfare benefit plans as defined by the ~~Employees~~ Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829].

**SECTION 20. AMENDMENT.** Section 26.1-34.1-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-34.1-05. Continued compliance.** The commissioner may require that a corporation possessing a certificate of exemption submit periodically any report the commissioner determines to be desirable or necessary to ascertain compliance with requirements of this chapter. The commissioner, whenever the commissioner determines it to be expedient, may make or cause to be made an examination of the assets and liabilities and other affairs of the corporation as the same pertains to annuity agreements entered into pursuant to this chapter. The reasonable expenses incurred for any such examination must be fixed and paid in accordance with section ~~26.1-03-20~~ 26.1-03-19.6.

**SECTION 21. AMENDMENT.** Section 31-01-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**31-01-16. Compensation and mileage and travel expense of witness.** A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district court or before any other board or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases in district court ~~cases~~, the attorney general shall pay prosecution witness fees and expenses, and the supreme court shall pay other witness fees for indigents and expenses. Prisoners may not be compensated as witnesses under this section.

**SECTION 22. AMENDMENT.** Subdivision d of subsection 3 of section 32-07.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. A beneficiary's interest in the profits from the crime must be reduced by the following amount:

- (1) Money paid to the beneficiary ~~from the as crime victim's~~ victims reparations ~~fund~~ under chapter ~~65-13~~ 54-23.4 because of the crime for which the felon was convicted.



- (2) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.
- (3) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

**SECTION 23. AMENDMENT.** Section 32-19-41 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-19-41. Abandoned personal property - Disposal by record title owner.** The record title owner of real property sold under judgment of foreclosure or foreclosure by advertisement for which a sheriff's deed has been issued and recorded, or after receipt and recording of a deed in lieu of foreclosure, may retain and dispose of without legal process any personal property left on the real property thirty days after the issuance of a sheriff's deed. If the total estimated value of the personal property is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing. The record title owner is entitled to the proceeds from the sale of the personal property, after all costs incidental to removal, storage, disposal, and sale of the property have been deducted. This section applies only to tracts of land not exceeding forty acres [~~64.76~~ 16.19 hectares].

**SECTION 24. AMENDMENT.** Section 32-19.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-19.1-01. Mortgage may provide for foreclosure under chapter.** The parties to a real estate mortgage upon property involving an area not to exceed forty acres [~~64.76~~ 16.19 hectares] may provide in said mortgage that upon default in the conditions of the mortgage the mortgage may be foreclosed as provided in this chapter.

**SECTION 25. AMENDMENT.** Subsection 3 of section 37-15-14.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. All moneys received as a result of charging the membership contribution authorized by subsection 1 must be deposited in a special fund in the state treasury to be known as the "veterans' home improvement fund". The fund must be invested by the state investment board in the manner provided in chapter 21-10, and all income received, less amounts deducted pursuant to section ~~21-10-10~~ 21-10-06.2, must be deposited in, or reinvested for the benefit of, the veterans' home improvement fund. Moneys in the veterans' home improvement fund must, subject to and following legislative appropriations, be expended only for expansion of present facilities of the home, for development of new facilities, for enrichment of living conditions, or for additional care for members of the home, as such expansion, development, enrichment, or additional care is deemed necessary by the administrative committee. The office of management and budget shall prepare the warrant-checks.

**SECTION 26. AMENDMENT.** Section 37-18.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**37-18.1-01. Administrative committee on veterans' affairs - Membership - Appointment.** There is hereby created an administrative committee on veterans' affairs, which, for purposes of this chapter, must hereinafter be referred to as the committee. The committee must consist of ~~four~~ three ex officio nonvoting members and fifteen voting members. The adjutant general, the center director of the veterans' administration, and the executive director of job service North Dakota are the ex officio nonvoting members who shall serve in an advisory capacity to the committee. On or before June 20, 1971, the American legion, the veterans of foreign wars, the disabled American veterans, the veterans of World War II, Korea, and Vietnam, (amvets), and Vietnam veterans' of America, incorporated, shall each prepare a list containing the names of six persons qualifying as veterans under the provisions of section 37-01-40, for appointment as voting members of the committee. On or before July 1, 1971, the governor shall select fifteen nominees, three from each list, five of whom must be appointed to a term of three years, five of whom must be appointed to a term of two years, and five of whom must be appointed to a term of one year, or until their successors are appointed and qualified. On or before the twentieth day of June in each year, beginning in the year 1972, each of the above-listed nominating organizations shall submit a list containing the names of two persons who qualify as veterans under the provisions of section 37-01-40, to the governor for appointment or reappointment as voting members of the committee. On or before the first day of July in each year, beginning in the year 1972, the governor shall select one nominee from each list, a total of five nominees, to fill expiring terms of voting members of the committee. Each such appointment must be for a term of three years, or until a successor is appointed and qualified. All terms begin on the first day of July and end on the thirtieth day of June in the year specified. In case of the inability or failure of any voting member of the committee to serve, the governor shall appoint another member from a list of two persons qualifying as veterans under the provisions of section 37-01-40, submitted by the nominating organization represented by the member who was unable or failed to serve. Such appointments must be made for the remainder of the unexpired term.

**SECTION 27. AMENDMENT.** Section 39-06-43 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-06-43. Extension of license suspension or revocation.** The director upon receiving a record of the conviction of any person upon a charge of driving a vehicle while the license or driving privileges of the person ~~was~~ were suspended shall extend the period of that suspension for an additional:

1. Like period not to exceed ninety days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or privilege has not been suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance;
2. One hundred eighty days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or privilege has been once suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance;
3. One year if the operator's record for the three-year period preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or privilege has been at least twice suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance.

If the original suspension was imposed for violation of section 39-08-01 or equivalent ordinance, the director shall extend the period of that suspension for at least six months. If the suspension of driving privileges resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there may be no additional period of suspension. Suspension periods for failure to appear or to post and forfeit bond on noncriminal traffic violations may be for an indefinite duration. If the conviction was upon a charge of driving while a license or driving privileges was revoked, the director may not issue a new license for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license. Upon a conviction of a person for violating a restricted license issued under section 39-06.1-11 and in which the underlying suspension was imposed for violating section 39-08-01 or equivalent ordinance or is governed by chapter 39-20, the director shall extend the period of the underlying suspension in accordance with subsection 5 of section 39-06-17.

**SECTION 28. AMENDMENT.** Subsection 3 of section 41-01-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (sections 41-01-15 ~~and~~, 41-02-15, ~~and~~ 41-02.1-16). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (section 41-01-03). (Compare "Contract".)

**SECTION 29. AMENDMENT.** Subsection 1 of section 41-02.1-76 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (subsection 3 of section 41-01-02 and section 41-02.1-51), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2 of section 41-02.1-75, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default described in subsection 1 of section ~~41-02.1-70~~ 41-02.1-71 or in subdivision a of subsection 3 of section ~~41-02.1-70~~ 41-02.1-71, or, if agreed, for other default of the lessee accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor; the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default.

**SECTION 30. AMENDMENT.** Subsection 1 of section 41-02.1-77 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. After default by the lessee under the lease contract as described in subsection 1 of section 41-02.1-71 or subdivision a of subsection 3 of section ~~41-02.1-70~~ 41-02.1-71 or, if agreed, after other default by the lessee, if the lessor complies with subsection 2, the lessor may recover from the lessee as damages:
  - a. For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 41-02.1-28), accrued and unpaid rent as of the date of entry of judgment in favor of the lessor the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default; and
  - b. For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, accrued and unpaid rent as of the date of entry of judgment in favor of the lessor the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and any incidental damages allowed under section 41-02.1-78, and the lessor will cause an appropriate credit to be provided against any judgment for damages to the extent that the amount of the judgment exceeds the recovery available under section 41-02.1-75 or 41-02.1-76 less expenses saved in consequence of the lessee's default.

**SECTION 31. AMENDMENT.** Subsection 3 of section 41-03-60 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Subject to subsection 4 3 of section 41-03-61, with respect to an instrument taken for collection by a collecting bank, notice must be given by the bank before midnight of the next banking day following the banking day on which the bank receives the notice of dishonor of the instrument and by any other person within thirty days following the day on which dishonor occurs.

**SECTION 32. AMENDMENT.** Subsection 1 of section 41-09-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to the provisions of section 41-04-22 on the security interest of the collecting bank, section 41-08-36.1 on security interests in securities, and section 41-09-13 on a security interest arising under the ~~chapter~~ chapters on sales and leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless all of the following take place:
  - a. The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement that contains a description of the collateral and, in addition, if the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned.

- b. Value has been given.
- c. The debtor has rights in the collateral.

**SECTION 33. AMENDMENT.** Subsection 1 of section 41-09-19 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith, and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the chapter on ~~commercial paper~~ negotiable instruments (chapter 41-03). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

**SECTION 34. AMENDMENT.** Subdivision f of subsection 1 of section 41-09-23 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- f. A security interest of a collecting bank (section 41-04-22) or in securities (section 41-08-36.1) or arising under the ~~chapter~~ chapters on sales and leases (section 41-09-13) or covered in subsection 3.

**SECTION 35. AMENDMENT.** Section 44-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**44-11-04. Special commissioner to hear and take testimony - Suspension of officer.** Whenever charges are filed against any officer mentioned in section 44-11-01, the governor shall appoint as a special commissioner a competent person learned in the law to hear and report the testimony for and against the accused and to file ~~his~~ that person's report of ~~said~~ the testimony, to be used on the hearing. ~~Such~~ The testimony must be reduced to writing, and when ~~said~~ the testimony is not taken by a shorthand reporter, each witness shall subscribe ~~his~~ the witness' name to ~~his~~ the witness' testimony when the same is so reduced. ~~The governor, if in his judgment~~ If the governor judges that the best interests of the state ~~shall~~ require it to be done, ~~the governor~~ by written order to be delivered to such officer, may suspend ~~such~~ the accused officer from the performance of duty during the pendency of the hearing. If the governor ~~thus shall suspend~~ suspends the accused, ~~he~~ the governor immediately shall notify the board ~~of~~ or persons authorized to fill a vacancy in ~~such~~ that office, and ~~thereupon~~ such ~~that~~ board or ~~those~~ persons, within five days after receipt of such notice, shall appoint ~~some~~ a competent person to fill ~~such~~ the office and perform the duties thereof ad interim.

**SECTION 36. AMENDMENT.** Section 44-11-07 of the North Dakota Century Code is amended and reenacted as follows:

**44-11-07. Removal from office upon hearing - Filling vacancy.** If upon a hearing the charges are sustained, the governor forthwith shall make an order in writing removing the accused officer from ~~his~~ the office, and shall cause a copy ~~thereof~~ of the order to be delivered to the accused and one copy to be delivered to the board ~~of~~ or persons having the authority to fill a vacancy in ~~such~~ that office. Thereupon ~~such~~ that board or person, within five days thereafter, shall appoint ~~some~~ a competent person to fill ~~such~~ the office and perform the duties thereof, unless the

accused, prior to the final hearing, had been suspended as provided by this chapter, and an ad interim appointment made. In such case the person appointed to ~~such~~ the office ad interim shall continue until the expiration of the term for which the accused was elected or appointed.

**SECTION 37. AMENDMENT.** Section 48-05-06 of the North Dakota Century Code is amended and reenacted as follows:

**48-05-06. Alcoholic beverages and drugs in charitable institutions prohibited.** Every person who shall take, send, or introduce any alcoholic beverage or controlled substance into any of the buildings or upon any of the premises of any charitable institution of this state, or of any county, or city thereof, except upon the express authority of the physician or chief executive officer of such institution, given in writing, is guilty of a class A misdemeanor. As used in this section, "controlled substance" ~~shall be as defined~~ has the meaning provided in subsection 4 of section 19-03.1-01, and shall include includes counterfeit substances as defined in ~~subsection 5 of section 19-03.1-01.~~

**SECTION 38. AMENDMENT.** Section 53-09-10 of the North Dakota Century Code is amended and reenacted as follows:

**53-09-10. Effect of modified comparative negligence fault.** Notwithstanding section ~~9-10-07~~ 32-03.2-02, any person is, consistent with the provisions of this chapter, barred from recovery for loss or damage resulting from a risk inherent in the sport of skiing, and likewise is so barred where it is established that a person has knowingly exposed ~~himself or herself~~ oneself to the real or potential hazards of a situation.

<sup>14</sup> **SECTION 39. AMENDMENT.** Section 54-03-25 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-03-25. Introduction of bills and amendments - Actuarial impact statement.** Beginning December 1, 1992, a legislative measure affecting workers' compensation benefits or premium rates may not be prefiled for introduction or introduced in either house of the legislative assembly unless ~~job service North Dakota~~ the workers compensation bureau has reviewed the measure and has determined whether the measure will have an actuarial impact on the workers' compensation fund. If the ~~job service North Dakota~~ workers compensation bureau determines that the measure will have an actuarial impact on the fund, the measure may not be prefiled or introduced unless accompanied by an actuarial impact statement prepared, at the expense of the ~~job service North Dakota~~ workers compensation bureau, by the actuary employed by the ~~job service North Dakota~~ workers compensation bureau. No amendment affecting workers' compensation benefits or premium rates may be attached to any legislative measure unless the amendment is accompanied by either a statement prepared by the ~~job service North Dakota~~ workers compensation bureau, stating that the amendment is not expected to have any actuarial impact on the workers' compensation fund, or an actuarial impact statement prepared, at the expense of the ~~job service North Dakota~~ workers compensation bureau, by the actuary employed by the ~~job service North Dakota~~ workers compensation bureau.

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<sup>14</sup> Section 54-03-25 was also amended by section 1 of House Bill No. 1253, chapter 628.

<sup>15</sup> **SECTION 40. AMENDMENT.** Section 54-16-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-04. May order transfer of moneys between funds - Order may draw from state treasury.** Whenever it is made to appear to the emergency commission by an itemized, verified petition of any board, commission, or officer authorized to expend public funds, and after receiving information from the director of the office of management and budget, that an emergency exists, the emergency commission shall assume that an emergency exists and may order money transferred from one fund to another fund belonging to or appropriated ~~from~~ for the same institution or board or the same state enterprise, or in an extremity may authorize money to be drawn from the state treasury to meet the emergency until such time as the legislative assembly can make an appropriation available therefor. The term "emergency" is limited to calamities or unforeseen happenings subsequent to the time such appropriation was made and which were clearly not within the contemplation of the legislative assembly and the governor.

**SECTION 41.** Section 54-34.4-04 of the North Dakota Century Code is created and enacted as follows:

**54-34.4-04. North Dakota motion picture development office - Advisory board.** The North Dakota motion picture development office is a part of the tourism department. The office shall promote North Dakota as a location for shooting films, television shows, documentaries, and commercials, and shall provide technical expertise to persons desiring to use the state as a filming location. The director of the tourism department shall appoint staff necessary to fulfill the functions and duties of the office and shall appoint an advisory board of no more than ten members to assist in advising the office and to provide technical expertise to offer prospective film companies seeking locations and advice. The board shall serve without compensation, except reimbursement for actual and necessary expenses at the same rate as allowed other state officers, to be paid from funds available to the office within the limits of legislative appropriations.

<sup>16</sup> **SECTION 42. AMENDMENT.** Subdivision a of subsection 1 of section 54-52-17.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Active employment in the armed forces of the United States, except as provided in subsection ~~3~~ 4, for up to four years of credit.

**SECTION 43. AMENDMENT.** Section 64-02-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**64-02-20. Expenses.** The commission may purchase supplies and equipment and may incur necessary expenses in carrying out the provisions of this title within legislative appropriations made for such purpose. Traveling expenses are allowed employees as provided in section ~~54-06-10~~ 54-06-09.

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<sup>15</sup> Section 54-16-04 was also amended by section 5 of Senate Bill No. 2032, chapter 507, and section 2 of Senate Bill No. 2288, chapter 508.

<sup>16</sup> Section 54-52-17.4 was also amended by section 6 of Senate Bill No. 2172, chapter 527.

<sup>17</sup> **SECTION 44. REPEAL.** Chapter 11-02 and sections 27-01-06 and 55-08-01.7 of the North Dakota Century Code and section 4-05.1-14 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved March 17, 1995

Filed March 20, 1995

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<sup>17</sup> Section 4-05.1-14 was also amended by section 25 of House Bill No. 1027, chapter 120.



## CHAPTER 55

## SENATE BILL NO. 2344

(Senators W. Stenehjem, Langley, G. Nelson)  
(Representatives Kliniske, Kretschmar, Mahoney)

PROFESSIONAL ASSOCIATIONS AND LIMITED  
LIABILITY PARTNERSHIPS

AN ACT to create and enact four new subsections to section 1-01-49 and sections 10-31-02.2, 10-31-03.2, 10-31-07.3, and chapter 45-22 of the North Dakota Century Code, relating to limited liability partnerships; to amend and reenact sections 5-01-01, 5-02-02, subsection 22 of section 10-09.1-01, sections 10-31-01, 10-31-02, 10-31-02.1, 10-31-03, 10-31-03.1, 10-31-04, 10-31-05, 10-31-06, 10-31-07, 10-31-07.2, 10-31-08, 10-31-09, 10-31-10, 10-31-11, 10-31-12, 10-31-13, 10-31-13.1, 10-31-14, and subsection 32 of section 10-32-02 of the North Dakota Century Code, relating to professional associations; to repeal sections 1-01-28, 10-19.1-07, and 10-32-03 of the North Dakota Century Code, relating to the definition of person and the reservation of legislative power; to provide a penalty; and to declare an emergency.

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

<sup>18</sup> SECTION 1. Four new subsections to section 1-01-49 of the North Dakota Century Code are created and enacted as follows:

"Individual" means a human being.

"Organization" includes a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity.

"Partnership" includes a limited liability partnership registered under chapter 45-22.

"Person" means an individual, organization, government, political subdivision, or government agency or instrumentality.

<sup>19</sup> SECTION 2. AMENDMENT. Section 5-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**5-01-01. Definitions.** In this title:

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<sup>18</sup> Section 1-01-49 was also amended by section 2 of House Bill No. 1027, chapter 120, and section 1 of Senate Bill No. 2343, chapter 103.

<sup>19</sup> Section 5-01-01 was also amended by section 1 of House Bill No. 1143, chapter 73; section 1 of Senate Bill No. 2198, chapter 74; and section 2 of Senate Bill No. 2243, chapter 103.

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing more than one-half of one percent of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.
7. "Microbrew pub" means a brewer that brews twenty-five or fewer barrels of beer per week and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
8. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, and limited liability partnership.
9. "Sparkling wine" means wine made effervescent with carbon dioxide.
- 9+ 10. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

<sup>20</sup> SECTION 3. AMENDMENT. Section 5-02-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**5-02-02. Qualifications for license.** No retail license may be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. The applicant, other than ~~corporate an organization~~, must be a legal resident of the United States and a resident of ~~the~~ this state ~~of North Dakota~~ and be a person of good moral character.
2. If applicant is a:

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<sup>20</sup> Section 5-02-02 was also amended by section 3 of Senate Bill No. 2343, chapter 103.

a. A corporation, ~~the~~ then:

- (1) The manager of the licensed premises and the officers; and directors; ~~and stockholders~~ must be legal residents of the United States and persons of good moral character; and
- (2) The shareholders:
  - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
  - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.

b. A limited liability company, then:

- (1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.
- (2) The members:
  - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
  - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
- (3) The applicant must first be properly registered with the secretary of state.

c. A limited partnership, then:

- (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character.
- (2) The general partners and limited partners:
  - (a) If individuals, must be legal residents of the United States and of good moral character; and
  - (b) If organizations, must meet the requirements of this sections for applicants that are organizations.
- (3) The applicant must first be properly registered with the secretary of state.

d. A general partnership, then:

- (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
- (2) The partners:

- (a) Who are individuals, must be legal residents of the United States and of good moral character; and
  - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
- e. A limited liability partnership, then:
  - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
  - (2) The partners:
    - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
    - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

Limited liability partnership applicants must first be properly registered with the secretary of state.

- 3. The applicant or manager must not have been convicted of an offense determined by the attorney general to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer; or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.
- 4. The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
- 5. The applicant for a state license must have first secured a local license.
- 6. The attorney general, or local governing body, may require the applicant to set forth such other information in the application as necessary to enable them to determine if a license should be granted.
- 7. The applicant may not have any financial interest in any wholesale alcoholic beverage business.

<sup>21</sup> **SECTION 4. AMENDMENT.** Subsection 22 of section 10-19.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 22. "Organization" means a domestic or foreign corporation, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

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<sup>21</sup> Section 10-19.1-01 was also amended by section 4 of Senate Bill No. 2343 chapter 103.

**SECTION 5. AMENDMENT.** Section 10-31-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-01. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Create" means to form an organization by:
  - a. Incorporating a professional corporation;
  - b. Organizing a professional limited liability company; or
  - c. Registering a professional limited liability partnership.
2. "Executive" means an officer or a director of a professional corporation, a manager or a governor of a professional limited liability company, or a partner of a professional limited liability partnership.
3. "Owner" means a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership.
4. "Foreign professional association organization" means a professional association organization that is incorporated or organized created under laws other than the laws of this state for purposes for which a professional association organization may be organized created under this chapter.
2. "Professional association" or "association" means:
  - a. A professional corporation that is incorporated under this chapter;  
or
  - b. A professional limited liability company that is organized under this chapter.
- 3+ 5. "Professional corporation" or "corporation" means a corporation which that is incorporated under this chapter for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation or nonlicensed employees as provided in section 10-31-07.1.
- 4+ 6. "Professional limited liability company" or "limited liability company" means a limited liability company which that is organized under this chapter for the sole and specific purpose of rendering professional service and which has as its members only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the association limited liability company or nonlicensed employees as provided in section 10-31-07.2.
7. "Professional organization" or "organization" means:
  - a. A professional corporation that is incorporated under this chapter;

- b. A professional limited liability company that is organized under this chapter; or
  - c. A professional limited liability partnership that is registered under this chapter.
8. "Professional limited liability partnership" or "limited liability partnership" means a limited liability partnership that is registered under this chapter for the sole and specific purpose of rendering professional service and has as its partners only individuals who are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability partnership or nonlicensed employees as provided in section 10-31-07.1.
- 5+ 9. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which prior to the passage of this chapter could not be performed by a corporation or, limited liability company, or a limited liability partnership.

**SECTION 6. AMENDMENT.** Section 10-31-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-02. Articles of incorporation.**

- 1. One or more individuals may incorporate a professional ~~association~~ organization in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. ~~Such The~~ articles of incorporation shall must meet the requirements of chapter 10-19.1 and; ~~in addition thereto;~~ contain the following:
  - 1+ a. The profession to be practiced through the professional corporation; and
  - 2+ b. The names and residence addresses of all of the original shareholders; ~~directors; and officers~~ of the professional corporation.
- 2. At the time ~~such the~~ the articles of incorporation are filed with the secretary of state, ~~there shall the professional corporation also be filed shall file~~ a certificate by from the regulating board of the profession involved that each of the directors and shareholders of voting shares, if any, is ~~duly~~ licensed to practice such the profession.

**SECTION 7. AMENDMENT.** Section 10-31-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-02.1. Articles of organization.**

- 1. Two or more individuals may organize a professional ~~association~~ organization in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. ~~Such The~~ articles of organization shall must meet the requirements of chapter 10-32, and; ~~in addition thereto;~~ must contain the following:
  - 1+ a. The profession to be practiced through the professional limited liability company; and

- 2- b. The names and residence addresses of all of the original members; ~~governors, and managers~~ of the professional limited liability company.
2. At the time ~~such~~ the articles of organization are filed with the secretary of state, ~~there shall the professional limited liability company also be filed shall file~~ a certificate ~~by from~~ the regulating board of the profession involved that each of the governors and members, if any, is ~~duly~~ licensed to practice ~~such~~ the profession.

SECTION 8. Section 10-31-02.2 of the North Dakota Century Code is created and enacted as follows:

10-31-02.2. Registration.

1. Two or more individuals may register a professional organization in the form of a limited liability partnership for the practice of a profession by filing a registration with the secretary of state. The registration must meet the requirements of chapter 45-22, and contain the following:
- a. The profession to be practiced through the professional limited liability partnership; and
- b. The names and residence addresses of all of the original partners of the professional limited liability partnership.
2. At the time the registration is filed with the secretary of state, the professional limited liability partnership also shall file a certificate from the regulating board of the profession involved that each of the partners is licensed to practice the profession.

SECTION 9. AMENDMENT. Section 10-31-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-03. Applicability of North Dakota Business Corporation Act chapters 10-19.1, 10-22, and 10-23. The North Dakota Business Corporation Act shall be applicable Chapters 10-19.1, 10-22, and 10-23 apply to a professional associations which are organized organization that is created in the form of corporations a corporation and which shall enjoy enjoys the powers and privileges and be is subject to the duties, restrictions, and liabilities of other corporations except where inconsistent with the letter and purpose of this chapter. This chapter shall take takes precedence in the event of any conflict with the provisions of the North Dakota Business Corporation Act chapters 10-19.1, 10-22, and 10-23.

SECTION 10. AMENDMENT. Section 10-31-03.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-03.1. Applicability of North Dakota Limited Liability Company Act chapter 10-32. The North Dakota Limited Liability Company Act shall be applicable Chapter 10-32 applies to a professional associations which are organized organization that is created in the form of a limited liability company and which shall enjoy enjoys the powers and privileges and be is subject to the duties, restrictions, and liabilities of other limited liability companies except where inconsistent with the letter and purpose of this chapter. This chapter shall take takes precedence in the event of any conflict with the provisions of the North Dakota Limited Liability Company Act chapter 10-32.

**SECTION 11.** Section 10-31-03.2 of the North Dakota Century Code is created and enacted as follows:

10-31-03.2. Applicability of chapter 45-22. Chapter 45-22 applies to a professional organization that is created in the form of a limited liability partnership and enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other limited liability partnerships except where inconsistent with the letter and purpose of this chapter. This chapter takes precedence in the event of any conflict with chapter 45-22.

**SECTION 12. AMENDMENT.** Section 10-31-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-04. Purpose for which ~~incorporated or organized~~ created.**

1. A professional ~~association organization~~ may be ~~incorporated or organized created~~ pursuant to the provisions of this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall to or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. This subsection does not preclude an organization created pursuant to this chapter from rendering more than one specific type of professional service if the services rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are set forth in chapters 43-26 and 43-40.
2. A professional organization may not engage in any business other than rendering the professional service for which it was ~~incorporated or organized created~~ to render. However, a professional ~~association organization~~ may own real and personal property necessary or appropriate for rendering the type of professional services it was ~~incorporated or organized created~~ to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment. This statute shall not preclude an ~~association incorporated or organized pursuant to the provisions of chapter 10-31~~ from rendering more than one specific type of professional service if the services rendered are such as are set forth in chapters 43-03 and 43-19.1.

**SECTION 13. AMENDMENT.** Section 10-31-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-05. Name.**

1. The name of a professional ~~association organization~~:
    - a. In the form of a corporation ~~organized incorporated~~ under this chapter shall ~~must~~ contain the word "~~chartered~~", "~~limited~~" or the abbreviation "~~Ltd.~~"; or "~~professional corporation~~" or the abbreviation "~~P.C.~~";
- (1) The word "chartered";
  - (2) The word "limited" or the abbreviation "Ltd.";



- (3) The words "professional corporation" or either the abbreviation "P.C." or the abbreviation "PC", either of which may be used interchangeably for all purposes authorized by chapter 10-31, including real estate matters, contracts, and filings with the secretary of state; or
    - (4) The words "professional association" or either the abbreviation "P.A." or the abbreviation "PA", either of which may be used interchangeably for all purposes authorized by chapter 10-31, including real estate matters, contracts, and filings with the secretary of state.
  - b. In the form of a limited liability company organized under this chapter ~~shall must~~ contain the word ~~"professional limited liability company"; or the abbreviation "P.L.C.":~~
    - (1) The words "professional limited liability company";
    - (2) The abbreviations "P.L.C." or "PLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; or
    - (3) The abbreviations "P.L.L.C." or "PLLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state.
  - c. In the form of a limited liability partnership registered under this chapter shall contain:
    - (1) The words "professional limited liability partnership"; or
    - (2) The abbreviations "P.L.L.P." or "PLLP", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state.
2. The use of the word "company", "corporation", "incorporated", "limited liability company", "limited liability partnership", or any other word, abbreviation, affix, or prefix indicating that it is a corporation ~~or~~, limited liability company, or limited liability partnership in the name of an ~~association incorporated or organized~~ organization created under this chapter, other than the words and abbreviations set forth in subsection 1, is ~~specifically~~ prohibited.

SECTION 14. AMENDMENT. Section 10-31-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-06. ~~Officers, directors, shareholders, managers, governors, and members~~ Executives and owners.

1. No ~~person individual~~ may be simultaneously a ~~director, shareholder, governor, or member~~ an executive or owner of more than one professional ~~association~~ organization.

2. A professional ~~association~~ organization in the form of a corporation which has only one shareholder need have only one director, who ~~shall~~ must be ~~such~~ the shareholder. That ~~person~~ individual also ~~shall~~ also serve as the president and treasurer of the corporation. The other officers of the corporation need not be licensed or otherwise legally authorized in the same field of endeavor as the president.
3. A retired ~~person~~ individual may not continue as a ~~director, officer, shareholder, governor, manager, or member~~ an executive or owner of a professional ~~corporation~~ organization.

**SECTION 15. AMENDMENT.** Section 10-31-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-07. Issuance and transfer of shares.** A professional ~~association~~ organization in the form of a corporation may issue its shares only to ~~persons~~ individuals who are duly licensed to render the same specific professional services as those for which the corporation was incorporated or as provided by section 10-31-07.1. A shareholder may voluntarily transfer shares in a professional corporation only to the corporation or a ~~person~~ to an individual owning or eligible to own the same type of shares as the ~~person~~ individual making the transfer. ~~Any~~ The issuance of any shares issued in violation of this section are null and is void. The voluntary transfer of any shares ~~transferred~~ in violation of this section is ~~null~~ and void. No ~~shares~~ share may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate ~~by~~ from the regulating board stating that the ~~person~~ individual to whom the transfer is to be made or the ~~shares~~ share issued is duly licensed to render the same specific professional services as those for which the corporation was ~~organized~~ incorporated.

**SECTION 16. AMENDMENT.** Section 10-31-07.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-07.2. Issuance and transfer of membership interests.** A professional ~~association~~ organization in the form of a limited liability company may issue membership interests only to ~~persons~~ individuals who are duly licensed to render the same specific professional services as those for which the company was organized. A member may voluntarily transfer membership interests in a professional limited liability company only to the professional limited liability company or a ~~person~~ to an individual owning or eligible to own a membership interest. ~~Any~~ The reflection of any membership interests issued in the required records of the professional limited liability company in violation of this section are null and is void. The voluntary transfer of any membership interests ~~transferred~~ in violation of this section is ~~null~~ and void. No membership ~~interests~~ interest may be ~~transferred upon the books of the professional limited liability company or issued by~~ reflected in the required records of the professional limited liability company until there is presented to and filed with the limited liability company a certificate ~~by~~ from the regulating board stating that the ~~person~~ individual to whom the transfer is to be made or the membership ~~interests~~ interest issued is duly licensed to render the same specific professional services as those for which the limited liability company was organized.

**SECTION 17.** Section 10-31-07.3 of the North Dakota Century Code is created and enacted as follows:

**10-31-07.3. Issuance and transfer of partnership interests.** A professional organization in the form of a limited liability partnership may issue partnership

interests only to individuals who are licensed to render the same specific professional services as those for which the partnership was registered. A partner may voluntarily transfer partnership interests in a professional limited liability partnership only to the professional limited liability partnership or an individual owning or eligible to own a partnership interest. The issuance of any partnership interests issued in violation of this section is void. The voluntary transfer of any partnership interests in violation of this section is void. No partnership interest may be transferred upon the books of the professional limited liability partnership or issued by the professional limited liability partnership until there is presented to and filed with the limited liability partnership a certificate from the regulating board stating that the individual to whom the transfer is to be made or the partnership interest issued is licensed to render the same specific professional services as those for which the limited liability partnership was registered.

**SECTION 18. AMENDMENT.** Section 10-31-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-08. Professional services through officers, managers, employees, agents.** No ~~association organized or incorporated~~ organization created under this chapter may render professional services except through its ~~officers, managers~~ executives, employees, and agents who are duly licensed to render ~~such~~ professional services in this state. However, this provision shall not be interpreted to include in In this section the term "employee"; as used herein, clerks, secretaries, bookkeepers, nurses, technicians, or other assistants does not include a clerk, secretary, bookkeeper, nurse, technician, or assistant, who are is not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required in connection with the profession practiced by a particular professional ~~association~~ organization.

**SECTION 19. AMENDMENT.** Section 10-31-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-09. Professional relationship preserved - Liability of ~~shareholders and members~~ owners - Professional regulation.**

1. This chapter does not modify any law applicable to the relationship between a person furnishing professional service and a person receiving ~~such~~ professional service, including liability arising out of ~~such the~~ professional service, and including the confidential relationship between the person rendering the professional service and the person receiving ~~such the~~ professional service, if any, and all confidential relationships previously enjoyed under the laws of this state or hereinafter enacted ~~shall~~ must remain inviolate.
2. Subject to the ~~foregoing provisions~~ subsection 1, nothing contained herein shall render a ~~director, officer, shareholder, governor, manager, member~~ in this section renders an executive, owner, or employee of a professional ~~association~~ organization personally liable in tort for any act in which that ~~person~~ individual has not personally participated or in contract for any contract which that ~~person~~ individual executes on behalf of a professional ~~association~~ organization within the limits of that ~~person's~~ individual's authority.
3. Nothing in this chapter ~~shall restrict~~ restricts or ~~limit~~ limits in any manner the authority and duty of the regulating boards for the licensing of an individual ~~persons~~ rendering professional services.

4. No professional ~~association~~ organization may do any act ~~which that~~ is prohibited to be done by any individual ~~person~~ licensed to practice the profession which the professional ~~association~~ organization is ~~incorporated or organized~~ created to render.

**SECTION 20. AMENDMENT.** Section 10-31-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-10. Legal disqualification.** If any ~~officer, director, shareholder, manager, governor, or member~~ executive or owner of a professional ~~association~~ organization becomes legally disqualified to render a professional service within this state or accepts employment or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of professional service, that ~~person~~ individual shall sever all employment with or financial interest in ~~such the~~ professional association ~~forthwith~~ organization. A professional ~~association's~~ organization's failure to comply or require compliance with this ~~provision~~ section is a ground for the forfeiture of its right to render professional service as a professional ~~association~~ organization pursuant to ~~the provisions~~ of this chapter.

**SECTION 21. AMENDMENT.** Section 10-31-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-11. Disposition of shares, membership interests, or partnership interests on death or disqualification.**

1. With respect to a professional ~~association~~ organization in the form of a corporation:
  - a. The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the death or disqualification of ~~such the~~ shareholder, or the same may be provided for in the bylaws or by private agreement. In the absence of a provision for the same in the articles of incorporation or the bylaws or by private agreement, the corporation ~~shall have~~ has an option to purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in such corporation within six months after the death or disqualification of the shareholder; ~~as the case may be~~.
  - b. The option price for ~~such the~~ shares ~~shall~~ must be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder unless otherwise specified in the articles of incorporation, bylaws, or by private agreement. Book value ~~shall~~ must be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by ~~such the~~ corporation.
  - c. ~~In the event~~ If the corporation fails to exercise ~~such the~~ option, the shares of the deceased or disqualified shareholder may be sold to any ~~person~~ duly individual licensed or otherwise legally authorized to render the same professional service as that for which the corporation was ~~organized~~ incorporated.
  - d. A disqualified shareholder, or the estate of a deceased shareholder, may continue to hold shares of the corporation during said option period and for a reasonable period thereafter, pending transfer to

another ~~duly~~ licensed or otherwise legally authorized ~~person individual~~, but ~~shall may~~ not be authorized to participate in any decisions concerning the performance of professional service.

2. With respect to a professional ~~association~~ organization in the form of a limited liability company:

- a. The articles of organization may provide for the purchase or redemption of the membership interest of any member upon the death or disqualification of ~~such the~~ member, or the same may be provided for in the operating agreement ~~or, the member-control agreement, or by private agreement~~. In the absence of a provision for the same in the articles of organization, the operating agreement ~~or, the member-control agreement, or by private agreement~~, the limited liability company ~~shall have~~ has an option to purchase the membership interest of a deceased member or a member no longer qualified to own a membership interest in ~~such the~~ limited liability company within six months after the death or disqualification of the member; ~~as the case may be~~.
- b. The option price for such membership interest ~~shall~~ must be the book value as of the end of the month immediately preceding the death or disqualification of the member unless otherwise specified in the articles of organization, ~~the operating agreement, or the member-control agreement, or by private agreement~~. Book value ~~shall~~ must be determined from the books and records of the limited liability company in accordance with the regular method of accounting used by ~~such the~~ limited liability company.
- c. ~~In the event~~ If the limited liability company fails to exercise ~~such the~~ option, the membership interest of the deceased or disqualified member may be sold to any ~~person duly individual~~ licensed or otherwise legally authorized to render the same professional service as that for which the limited liability company was organized.
- d. A disqualified member, or the estate of a deceased member, may continue to hold a membership ~~interests of interest in~~ the limited liability company during ~~said the~~ option period and for a reasonable period thereafter, pending transfer to another ~~duly~~ licensed or otherwise legally authorized ~~person individual~~, but ~~shall may~~ not be authorized to participate in any decisions concerning the performance of professional service.

3. With respect to a professional organization in the form of a limited liability partnership:

- a. The partnership agreement may provide for the purchase or redemption of the partnership interest of any partner upon the death or disqualification of the partner, or the same may be provided for by private agreement. In the absence of a provision for the same in the partnership agreement or by private agreement, the limited liability partnership has an option to purchase the partnership interest of a deceased partner or a partner no longer qualified to own a partnership interest in the limited liability partnership within six months after the death or disqualification of the partner.

- b. The option price for the partnership interest must be the book value as of the end of the month immediately preceding the death or disqualification of the partner unless otherwise specified in the partnership agreement or by private agreement. Book value must be determined from the books and records of the limited liability partnership in accordance with the regular method of accounting used by the limited liability partnership.
- c. If the limited liability partnership fails to exercise the option, the partnership interest of the deceased or disqualified partner may be sold to any individual licensed or otherwise legally authorized to render the same professional service as that for which the limited liability partnership was registered.
- d. The disqualified partner, or the estate of a deceased partner, may continue to hold a partnership interest in the limited liability partnership during the option period and for a reasonable period thereafter, pending transfer to another licensed or otherwise legally authorized individual, but may not participate in any decisions concerning the performance of professional service.

**SECTION 22. AMENDMENT.** Section 10-31-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-12. Death of last or only shareholder - Amendment of articles of incorporation - Involuntary dissolution.**

1. In the event of the death of the last or only shareholder of a professional corporation whose shares pass to heirs by intestate succession, to devisees under a last will and testament, or otherwise pass by operation of law to ~~a person or persons~~ an individual not legally qualified to render the professional services which the professional corporation was ~~organized~~ incorporated to perform, the heirs, devisees, or personal representative of ~~such the~~ deceased shareholder, within six months after the date of death of ~~such the~~ last or only shareholder, may amend the articles of incorporation to provide that ~~such the~~ corporation ~~shall~~ must continue as a general corporation under ~~the North Dakota Business Corporation Act~~ chapters 10-19.1, 10-22, and 10-23.
2. The death of the last or only shareholder of a professional corporation and the failure of the heirs, devisees, or personal representative to make ~~such an~~ amendment within six months after ~~such the~~ death ~~shall be~~ is a ground for the involuntary dissolution of the professional corporation.
3. When notified of ~~such the~~ facts, the secretary of state shall ~~forthwith~~ certify ~~such~~ immediately the facts to the attorney general who shall ~~immediately~~ take immediate appropriate action to dissolve the professional corporation.

**SECTION 23. AMENDMENT.** Section 10-31-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-13. Annual reports - Renewal.**

1. With respect to a professional ~~association~~ organization in the form of a corporation:

- a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of ~~such reports~~ the report by the ~~North Dakota Business Corporation Act chapters 10-19.1, 10-22, and 10-23~~ giving the name and residence addresses of all officers, directors, and shareholders of ~~such the~~ corporation as of the thirtieth day of June next preceding the filing of ~~such the~~ report.
  - b. Attached to this report ~~shall must~~ be a form certifying that all of ~~such~~ directors and shareholders of voting shares are ~~duly~~ licensed to render the same specific professional services as those for which the corporation was ~~organized incorporated~~. This certificate ~~shall must~~ be ~~made~~:
    - (1) Made on ~~such~~ a form as ~~shall be~~ prescribed and furnished by the secretary of state; ~~shall be signed~~;
    - (2) Signed by the president or vice president and attested by the secretary or assistant secretary of the corporation; ~~and sworn~~;
    - (3) Sworn to before a notary public by the ~~persons individuals~~ executing the certificate; and ~~accompanied~~
    - (4) Accompanied by a the filing fee of twenty dollars payable to the secretary of state. ~~No other fees shall be charged therefor prescribed in chapter 10-23.~~
  - c. A copy of ~~such the~~ certificate ~~shall must~~ be filed at the same time with the regulatory board ~~which that~~ licenses the shareholders described in the certificate ~~and no~~. No filing fee shall may be charged by the regulatory board ~~for such filing~~.
  - d. ~~The A~~ regulatory ~~boards board~~ issuing the licenses described in a license under section 10-31-01 ~~are hereby authorized and directed to shall issue the certificates a certificate required by in~~ section 10-31-02. ~~Such certificates shall~~ The certificate must be on forms ~~as a form~~ prescribed and furnished by the secretary of state. The regulatory ~~boards board~~ may charge and collect a fee not to exceed twenty dollars per ~~person so individual~~ certified to be ~~duly~~ licensed by ~~such the~~ regulating board.
2. With respect to a professional ~~association~~ organization in the form of a limited liability company:
    - a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of ~~such reports~~ the report by the ~~North Dakota Limited Liability Company Act chapter 10-32~~ giving the name and residence address of all managers, governors, and members of ~~such association the organization~~ as of the thirtieth day of June next preceding the filing of ~~such the~~ report.
    - b. Attached to this report ~~shall must~~ be a form certifying that all ~~such~~ governors and members holding voting membership interests are ~~duly~~ licensed to render the same specific professional services as

those for which the limited liability company was organized. This certificate ~~shall must~~ be made:

- (1) ~~Made on such~~ a form as ~~shall be~~ prescribed and furnished by the secretary of state; ~~shall be signed~~;
- (2) ~~Signed~~ by the president and attested by the secretary of the limited liability company; ~~and sworn~~;
- (3) ~~Sworn~~ before a notary public by the ~~persons individuals~~ executing the certificate; and ~~accompanied~~
- (4) ~~Accompanied by a the~~ filing fee of fifty dollars payable to the ~~secretary of state. No other fees shall be charged therefor~~ prescribed in section 10-32-180.

- c. A copy of ~~such the~~ certificate ~~shall must~~ be filed at the same time with the regulatory board ~~which that~~ licenses the members described in the certificate ~~and no~~. No filing fee ~~shall may~~ be charged by the regulatory board ~~for such filing~~.
- d. ~~The A~~ regulatory ~~boards board~~ issuing the licenses described in a license under section 10-31-01 ~~are authorized and directed to shall~~ issue ~~the certificates~~ a certificate required by in section 10-31-02. ~~Such certificates shall~~ The certificate must be on ~~forms a form~~ prescribed and furnished by the secretary of state. The regulatory ~~boards board~~ may charge and collect a fee not to exceed twenty dollars per ~~person so individual~~ certified to be ~~duly~~ licensed by the regulatory board.

3. With respect to a professional organization in the form of a limited liability partnership:

- a. The renewal registration filed with the secretary of state pursuant to chapter 45-22 must include the name and residence address of all partners of the organization as of the thirtieth day of June next preceding the filing of the renewal registration.
- b. Attached to the renewal registration must be a form certifying that all partners holding voting partnership interests are licensed to render the same specific professional services as those for which the limited liability partnership was registered. This certificate shall be:
  - (1) Made on a form prescribed and furnished by the secretary of state;
  - (2) Signed by two managing partners of the limited liability partnership;
  - (3) Sworn before a notary public by the individuals executing the certificate; and
  - (4) Accompanied by the filing fee prescribed in section 45-22-22.



- c. A copy of the certificate must be filed at the same time with the regulatory board that licenses the partners described in the certificate. No filing fee may be charged by the regulatory board.
- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.

**SECTION 24. AMENDMENT.** Section 10-31-13.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-13.1. Foreign professional ~~associations~~ organizations - Practice in North Dakota the state.**

1. A foreign professional ~~association~~ organization may practice a profession in this state only through ~~shareholders, directors, officers, members, governors, managers~~ executives, owners, employees, and agents who are licensed to practice the profession in this state. The provisions of this chapter with respect to the practice of a profession by a professional ~~association~~ organization apply to a foreign professional ~~association~~ organization.
2. The certificate of authority of a foreign professional ~~association~~ organization may be revoked by the secretary of state as provided for in this chapter, if the foreign professional ~~association~~ organization fails to comply with ~~any provisions of~~ this chapter.
3. This chapter ~~shall~~ does not be construed to prohibit the practice of a profession in this state by an individual who is a ~~shareholder, director, officer, member, governor, manager~~ an executive, owner, employee, or agent of a foreign professional ~~association~~ organization, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional ~~association~~ organization.
4. This section ~~shall apply~~ applies regardless of whether ~~or not~~ the foreign professional ~~association~~ organization is authorized to practice a profession in this state.

**SECTION 25. AMENDMENT.** Section 10-31-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-31-14. ~~Citation~~ - Construction.** This chapter ~~shall be known and may be cited as the North Dakota Professional Association Act, and shall must be so construed as to~~ effectuate its general purpose of making available to professional ~~persons~~ individuals the benefits of the corporate form and, the benefits of the limited liability company form, and the benefits of the limited liability partnership form.

<sup>22</sup> **SECTION 26. AMENDMENT.** Subsection 32 of section 10-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32. "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

**SECTION 27.** Chapter 45-22 of the North Dakota Century Code is created and enacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box.
2. "Domestic limited liability partnership" means a general partnership that is organized under the laws of this state with a registration or a renewal registration in effect and which is not a foreign limited liability partnership.
3. "Filed with the secretary of state" means that a signed original of a document, together with the fees provided in section 45-22-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law.
4. "Foreign limited liability partnership" means a limited liability partnership:
  - a. Which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability partnership may be organized under this chapter;
  - b. With a registration or renewal registration in effect; and
  - c. Which continuously maintains its limited liability partnership status in its jurisdiction of origin during all periods of registration and renewal registration.
5. "General partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under North Dakota law, predecessor law, or comparable law of another jurisdiction.
6. "Limited liability partnership" and "partnership" mean either:
  - a. A domestic limited liability partnership; or
  - b. A foreign limited liability partnership.

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<sup>22</sup> Section 10-32-02 was also amended by section 46 of Senate Bill No. 2343, chapter 103.

7. "Managing partners" means the partners charged with the management of the limited liability partnership and if no partners are so specifically designated, then all partners.
8. "Notice" is given to a limited liability partnership or to a partner of the partnership when in writing and mailed or delivered to the partnership or the partner at the registered office or principal executive office of the partnership.
  - a. In all other cases, "notice" is given to a person:
    - (1) When mailed to the person at an address designated by the person or at the last known address of the person; or
    - (2) When handed to the person; or
    - (3) When left at the office of the person with a clerk or other person in charge of the office; or
      - (a) If there is no one in charge, when left in a conspicuous place in the office; or
      - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.
  - b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.
  - c. Notice is deemed received when it is given.
9. "Originally registered" and "original registration" refers to the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.
10. "Principal executive office" means an office where the limited liability partnership conducts business. If the limited liability partnership has no office from which it conducts business, then the term means the registered office of the partnership.
11. "Register" means the act of filing with the secretary of state which causes:
  - a. A domestic limited liability partnership to be created; or
  - b. A foreign limited liability partnership to be authorized to transact business in this state.
12. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.
13. "Registration" means the document which, when filed with the secretary of state, causes:
  - a. A domestic limited liability partnership to be created; or

- b. A foreign limited liability partnership to be authorized to do business in this state.
- 14. "Renewal registration" means the document by which the status of a domestic limited liability partnership or a foreign limited liability partnership is extended for an additional one-year period.
- 15. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

#### 45-22-03. Registration.

- 1. In determining whether the underlying general partnership necessary for registration as a domestic limited liability partnership has been formed, the rules set forth in section 45-14-01 apply.
- 2. A limited liability partnership must have in effect and filed with the secretary of state a registration that complies with this section.
  - a. For one year from its date of filing, the registration of:
    - (1) A domestic limited liability partnership establishes its status as a domestic limited liability partnership; and
    - (2) A foreign limited liability partnership authorizes it to transact business in this state.

Unless a renewal registration is properly filed with the secretary of state, the registration is subject to revocation by the secretary of state as provided in section 45-22-16.

- b. The limited liability partnership may file a renewal registration that complies with this section no earlier than sixty days before the expiration of the one-year period.
    - (1) A limited liability partnership registration may be renewed for successive one-year periods.
    - (2) A proper renewal registration extends the registration of a limited liability partnership for another one-year period, measured from the end of the previous one-year period.
    - (3) Unless a renewal registration is properly filed with the secretary of state, the registration shall be subject to revocation by the secretary of state as provided in section 45-22-16.
- 3. A registration or renewal registration must contain:

a. With respect to a domestic limited liability partnership:

- (1) The name of the domestic limited liability partnership.
- (2) The nature of the business to be transacted in this state.
- (3) The address of the principal executive office of the domestic limited liability partnership.
- (4) The address of the registered office of the domestic limited liability partnership and the name of its registered agent at that address.
- (5) The name and address of each managing partner.
- (6) An acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration.
- (7) An acknowledgment that other jurisdictions, including other jurisdictions that have limited liability partnership statutes, may not provide any limited liability shield or may not provide as broad a limited liability shield as does this chapter.

b. With respect to a foreign limited liability partnership:

- (1) The name of the foreign limited liability partnership and, if different, the name under which it proposes to transact business in this state.
- (2) The jurisdiction of its original registration.
- (3) The date on which the foreign limited liability partnership expires in the jurisdiction of its origin.
- (4) The nature of the business to be transacted in this state.
- (5) The address of the principal executive office of the foreign limited liability partnership.
- (6) The address of the registered office of the foreign limited liability partnership and the name of its registered agent at that address.
- (7) The name and address of each managing partner.
- (8) An acknowledgment that the status of limited liability partnership in this state will automatically expire:
  - (a) Unless the foreign limited liability partnership files a proper renewal registration; and
  - (b) Unless the foreign limited liability partnership continuously maintains its limited liability partnership status in its jurisdiction of origin.

- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.
- 4. An original of the registration or renewal registration must be filed with the secretary of state.
  - a. If the secretary of state finds that the registration or renewal registration conforms to law and that the fees provided in section 45-22-22 have been paid, the secretary of state shall endorse on the original the word "filed" and the day, month, and year of the filing and shall file the original in the office of the secretary of state.
  - b. If any statement in the registration or renewal registration was false when made or becomes inaccurate after the registration or renewal registration is filed, making the registration or renewal registration false or inaccurate in any respect:
    - (1) The limited liability partnership or foreign limited liability partnership shall file promptly with the secretary of state an amended or corrected registration or renewal registration; and
    - (2) With respect to foreign limited liability partnerships:
      - (a) In the case of a change in its name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered; or
      - (b) In the case of a termination or merger:
        - [1] A foreign limited liability partnership that is not the surviving organization need not file an amended registration but, within thirty days after the merger or termination becomes effective, shall file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered.
        - [2] It is not necessary for any foreign limited liability partnership, which is the surviving organization in a merger, to procure either a new or amended registration unless the name of the foreign limited liability partnership is changed or unless the foreign limited liability partnership desires to pursue in this state purposes other than those which it is authorized to transact in this state.
  - c. With respect to renewals:

- (1) A renewal registration received by the secretary of state in a sealed envelope postmarked by the United States postal service on or before the lapse, or a renewal registration in a sealed packet with a verified shipment date by any other carrier service on or before the lapse, and properly addressed to the secretary of state is deemed to be in compliance with the requirement for timely delivery.
- (2) The secretary of state must file the renewal registration if the renewal registration conforms to the requirements of this section.
- (3) If the renewal registration does not conform, the registration must be returned to the limited liability partnership for any necessary corrections. If the corrected renewal registration is filed after the lapse date, but within thirty days after it is returned for correction, the penalties for failure to file the renewal registration within the time required do not apply.
- (4) Each limited liability partnership that fails or refuses to file its renewal registration on or before the lapse date of a registration, must pay an additional late renewal fee as provided in section 45-22-22.
- d. The secretary of state may destroy any registrations and renewal registrations which have been on file for seven years.
5. A managing partner must be separately registered with the secretary of state at the time of the registration of a limited liability partnership whenever that managing partner is either a domestic or foreign:
  - a. Corporation;
  - b. Limited liability company;
  - c. Limited partnership;
  - d. Limited liability partnership; or
  - e. General partnership using a fictitious name.
6. With respect to a domestic limited liability partnership:
  - a. A general partnership's decision to file a registration is an ordinary matter that may be decided by a majority of the partners.
  - b. The decision to withdraw or not renew a registration may be undertaken only with the consent of all of the partners.
7. A general partnership that registers as a limited liability partnership is not deemed to have dissolved as a result of the registration.

#### 45-22-04. Name.

1. The name of a limited liability partnership:

- a. Must be in the English language or in any other language, expressed in English letters or characters.
  - b. Must contain the words "limited liability partnership" or either the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations can be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state, or any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of original registration.
  - c. May not contain a word or phrase that indicates or implies that it is formed for a purpose other than one or more business purposes for which a partnership may be formed under North Dakota law.
  - d. May not be the same as, or deceptively similar to, the name of a domestic or foreign corporation, limited liability company, limited partnership or limited liability partnership, whether for profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of formation, reserved in the manner provided in section 45-22-05 or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the registration:
    - (1) The written consent of the domestic or foreign corporation, limited liability company, limited partnership, limited liability partnership or partnership authorized to do business in the state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or
    - (2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
2. The secretary of state shall determine whether a name is "deceptively similar" to another name for purposes of this section.
  3. This section and section 45-22-05 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trade marks, service names and service marks; or
      - (4) Any other rights to the exclusive use of names or symbols.
    - b. Derogate the common law or principles of equity.



4. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate its limited liability partnership existence. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this section, even though its registration may have been filed with the secretary of state.
5. With respect to foreign limited liability partnerships:
  - a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, whether or not the name is the same under which it is authorized in its jurisdiction of original registration.
  - b. A fictitious name certificate must be filed as provided in chapter 45-11 when registering under a name other than the name as authorized in the jurisdiction of original registration.

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership name otherwise permitted by section 45-22-04 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-22-22.
  - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
  - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of limited liability partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-22-22.
4. The right to the exclusive use of a limited liability partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation together with the fees provided in section 45-22-22.

45-22-06. Failure to use required name. If a person purports to enter into a contract or other undertaking on behalf of a limited liability partnership and does not disclose to the other party that part of the limited liability partnership's name that complies with subsection 1 of section 45-22-04, then that person is personally liable on the contract or undertaking, unless that person can show in making the contract or accepting the undertaking that the other party did not rely on the partnership being an ordinary general partnership. Any partner of a limited liability partnership who consents to a person not making the disclosure described in this

section is also personally liable on the contract or undertaking, unless that partner can make the showing described in this section.

45-22-07. Unauthorized assumption of limited liability partnership powers - Liability. A person who assumes to act as a limited liability partnership without a registration or renewal registration in effect is jointly and severally liable for all debts and liabilities incurred or arising as a result.

45-22-08. Limited liability partnership shield. A partner of a limited liability partnership is not, merely on account of this status, personally liable for anything chargeable to the partnership under sections 45-15-05 and 45-15-06, or for any other debts or obligations of the limited liability partnership, if the charge, debt, or obligation arose or accrued while the partnership had a registration or renewal registration in effect. A registration or renewal registration remains in effect until revoked by the secretary of state pursuant to section 45-22-16. This section does not limit or impair the right of the limited liability partnership or its partners to make claims against any particular partner on the grounds that the particular partner:

1. Has, in its capacity as a partner, breached a duty to the limited liability partnership or to the other partners; or
2. Is obligated to contribute so that partners share losses of capital according to section 45-16-01 and share the liabilities stated in subsections 2 and 3 of section 45-20-07.

45-22-09. Piercing the limited liability shield. With respect to piercing the limited liability partnership shield:

1. Except as provided in subsection 2, the case law that states the conditions and circumstances under which the corporate veil or limited liability shield of a corporation may be pierced under North Dakota law also applies to limited liability partnerships, taking into account the differences between corporations and partnerships.
2. The use of informal procedures or arrangements for the management and for the conduct of business is not a ground for piercing the limited liability shield of the limited liability partnership.

45-22-10. Liability of partners for illegal distributions. With respect to the liability of partners for illegal distributions:

1. A partner who receives a distribution from a limited liability partnership that would have been in violation of section 10-19.1-92 had the limited liability partnership been a corporation with a board of directors is liable to the limited liability partnership, its receiver, or other person winding up its affairs, but only to the extent that the distribution received by the partner exceeded the amount that properly could have been paid under section 10-19.1-92.
2. An action may not be commenced under this section more than two years from the date of the distribution.

45-22-11. Registered office and agent.

1. A limited liability partnership continuously shall maintain a registered office in this state. A registered office need not be the same as the

principal place of business or the principal executive office of the limited liability partnership.

2. A limited liability partnership shall designate a registered agent in its registration.
  - a. The registered agent may be an individual residing in this state, a domestic corporation, a domestic limited liability company, or a domestic limited liability partnership, or a foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.
  - b. The registered agent must maintain a business office that is identical with the registered office.
  - c. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in section 45-22-22.

45-22-12. Change of registered office or agent.

1. A limited liability partnership may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 45-22-22, a statement containing:
  - a. The name of the limited liability partnership.
  - b. If the address of its registered office is to be changed, the new address of its registered office.
  - c. If its registered agent is to be designated or changed, the name of its new registered agent.
  - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
  - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
  - f. A statement that the change of registered office or registered agent was authorized by resolution of the partnership.
2. A registered agent may resign by filing with the secretary of state a written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability partnership at its principal executive office, or to a legal representative of the limited liability partnership. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or name of the registered agent, as the case may be, of each limited liability partnership represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the

registered agent, need not be responsive to subdivision c or f of subsection 1 and must state that a copy of the statement has been mailed to each of those limited liability partnerships or to the legal representative of each of those limited liability partnerships.

45-22-13. Voluntary withdrawal of status.

1. A partnership may end its status as a limited liability partnership at any time by filing a withdrawal statement with the secretary of state.
2. The withdrawal statement must contain:
  - a. With respect to a domestic limited liability partnership:
    - (1) The name of the domestic limited liability partnership.
    - (2) A statement that the domestic limited liability partnership is withdrawing its current registration.
    - (3) An acknowledgment by the domestic limited liability partnership that the withdrawal ends its limited liability partnership status.
  - b. With respect to a foreign limited liability partnership:
    - (1) The name of the foreign limited liability partnership.
    - (2) The jurisdiction of its original registration.
    - (3) A statement that the foreign limited liability partnership is not transacting business in this state.
    - (4) A statement that the foreign limited liability partnership surrenders its authority to transact business in this state and is withdrawing its current registration.
    - (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends its foreign limited liability partnership status in this state.
    - (6) A statement that the foreign limited liability partnership revokes the authority of its registered agent in this state to accept service of process and consents that service of process based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact business in this state may be made on the foreign limited liability partnership by service upon the secretary of state.
    - (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.
3. The withdrawal statement may state a delayed withdrawal date, if that date is before the expiration date of the current registration. If the withdrawal statement does not state an effective date, then the statement is effective when filed.

4. If the foreign limited liability partnership is not the surviving organization in a merger or termination, then the filing with the secretary of state of a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered constitutes a valid withdrawal statement.

45-22-14. Filing after dissolution.

1. A dissolved limited liability partnership may continue its status as a limited liability partnership through termination either by:
  - a. Continuing to file annual renewal registrations until termination; or
  - b. Filing a final renewal registration that, in addition to providing the information required by subsection 3 of section 45-22-03:
    - (1) States that the partnership is dissolved and is winding up its affairs.
    - (2) Identifies the cause of the dissolution.
    - (3) States that the renewal registration is the final renewal registration and will remain in effect until termination.
2. A final renewal registration that complies with subdivision b of subsection 1 must not contain the statement required in:
  - a. Paragraph 6 of subdivision a of subsection 3 of section 45-22-03 in the case of a domestic limited liability partnership; or
  - b. Paragraph 8 of subdivision b of subsection 3 of section 45-22-03 in the case of a foreign limited liability partnership.
3. When the dissolved limited liability partnership has wound up its affairs, it shall file with the secretary of state a termination notice, together with the fees provided in section 45-22-22. The termination notice must:
  - a. Contain:
    - (1) The name of the limited liability partnership.
    - (2) A statement that the limited liability partnership has dissolved and wound up its affairs.
    - (3) A statement that the limited liability partnership is terminated.
  - b. Be signed by one former managing partner who has not wrongfully dissolved the partnership.

45-22-15. Limited liability after dissolution. With respect to limited liability after dissolution:

1. Subject to section 45-22-14, the limited liability shield described in sections 45-22-08 and 45-22-09 continues in full force for the dissolved

limited liability partnership regardless of any dissolution, winding up, and termination.

2. If a limited liability partnership dissolves and its business is continued by a successor general partnership under section 45-20-02, then the limited liability described in sections 45-22-08 and 45-22-09 also applies to that successor limited liability partnership until the expiration of the registration that the dissolved limited liability partnership had in effect under section 45-22-03 at the moment of dissolution. The successor general partnership may at any time file its own registration under section 45-22-03.

45-22-16. Revocation of registration.

1. The registration of a limited liability partnership may be revoked by the secretary of state upon the occurrence of any of these events:
  - a. The limited liability partnership has failed:
    - (1) To appoint and maintain a registered agent as required by this chapter;
    - (2) To file a report upon any change in the name or business address of the registered agent;
    - (3) To file any required amendment to its registration; or
    - (4) To file a renewal registration as provided in subsection 2 of section 45-22-04.
  - b. A misrepresentation or mistake has been made in any material matter in any registration, report, affidavit, or other document submitted by the limited liability partnership pursuant to this chapter.
2. The secretary of state may not revoke the registration of a limited liability partnership unless:
  - a. The secretary of state has given the limited liability partnership at least sixty days' notice of the reason for the pending revocation by mail addressed to its registered office or, if the limited liability partnership fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the limited liability partnership has failed:
    - (1) To appoint and maintain a registered agent as required by this chapter;
    - (2) To file the report of change regarding the name or business address of the registered agent;
    - (3) To file the required amendment to its registration;

- (4) To file a renewal registration as provided in subsection 2 of section 45-22-04; or
  - (5) To correct the misrepresentation or mistake.
3. Upon the expiration of the sixty-day period without the limited liability partnership having cured the reason for the pending revocation set forth in the notice, the registration is revoked. The secretary of state shall note the revocation in the records of the secretary of state and shall give notice of the revocation to the limited liability partnership. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record. If the limited liability partnership failed to appoint and maintain a registered office in this state, then to its principal executive office.

45-22-17. Service of process on a limited liability partnership.

1. A process, notice, or demand required or permitted by law to be served on a limited liability partnership may be served either on the registered agent of the limited liability partnership or on any responsible person found at the registered office of the limited liability partnership or on the secretary of state as provided in this section.
2. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership cannot be found at the principal place of business in this state, the secretary of state is the agent of the limited liability partnership on whom the process, notice, or demand may be served.
  - a. The return of the sheriff, or affidavit of a person not a party, that no registered agent or responsible person may be found at either the registered office or at the principal place of business of the limited liability partnership in this state is conclusive evidence that the limited liability partnership has no registered agent or responsible person at its registered office or at its principal place of business in this state.
  - b. Service on the secretary of state of any process, notice, or demand is deemed personal service on the limited liability partnership and may be made by filing with the secretary of state one original and two copies of the process, notice, or demand together with the fees provided in section 45-22-22.
  - c. The secretary of state immediately shall forward, by certified mail addressed to the limited liability partnership at its registered office or at its principal place of business in this state, a copy of the process, notice, or demand.
  - d. Service on the secretary of state is returnable in not less than thirty days, notwithstanding, a shorter period specified in the process, notice, or demand.
3. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to it.

4. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited liability partnership in any other manner permitted by law.

45-22-18. Foreign limited liability partnership governing law. The laws of the jurisdiction under which a foreign limited liability partnership is originally registered govern its organization and its internal affairs. A foreign limited liability partnership may not be denied registration to transact business in this state by reason of any difference between those laws and the laws of this state. A foreign limited liability partnership holding a valid registration in this state has the same, but no greater, rights and privileges as a domestic limited liability partnership. The registration does not authorize the foreign limited liability partnership to exercise any of its powers for purposes that a domestic limited liability partnership is forbidden by law to exercise in this state.

45-22-19. Transacting business and obtaining licenses and permits by a foreign limited liability partnership. No foreign limited liability partnership may transact business in this state or obtain any license or permit required by this state until the partnership has registered with the secretary of state.

45-22-20. Transaction of business by a foreign limited liability partnership without registration.

1. A foreign limited liability partnership transacting business in this state may not maintain any cause of action in any court of this state until the partnership has registered with the secretary of state.
2. The failure of a foreign limited liability partnership to register with the secretary of state does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any claim for relief in any court of this state.
3. A foreign limited liability partnership, by transacting business in this state without having registered with the secretary of state, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.
4. All persons who assume to act as a foreign limited liability partnership without registration are jointly and severally liable for all debts and liabilities incurred or arising in this state as a result.

45-22-21. Transactions by a foreign limited liability partnership not constituting the transaction of business.

1. The following activities of a foreign limited liability partnership, among others, do not constitute transacting business within the meaning of this chapter:
  - a. Maintaining, defending, or settling any proceeding.
  - b. Holding meetings of its partners or carrying on any other activities concerning its internal affairs.
  - c. Maintaining bank accounts.



- d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability partnership's own partnership interests or maintaining trustees or depositories with respect to those partnership interests.
  - e. Selling through independent contractors.
  - f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
  - g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
  - h. Securing or collecting debts or enforcing mortgages, and security interests in property securing the debts.
  - i. Holding, protecting, renting, maintaining, and operating real or personal property in this state so acquired.
  - j. Selling or transferring title to property in this state to any person.
  - k. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.
- 2. As used in this section, the term "transacting business" has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.
  - 3. For purposes of this section, any foreign limited liability partnership that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, is considered transacting business in this state.
  - 4. This section does not apply in determining the contracts or activities that may subject a foreign limited liability partnership to service of process or taxation in this state or to regulation under any other law of this state.

#### 45-22-22. Fees and charges.

- 1. The secretary of state shall charge and collect for:
  - a. Filing a registration, twenty-five dollars. When there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.
  - b. Filing a renewal registration, twenty-five dollars.
  - c. Late filing of a renewal registration after the lapse of a registration, twenty dollars. This fee is in addition to the renewal registration fee.
  - d. Filing a statement of correction, or amended registration, twenty-five dollars.

- e. Filing an application to reserve a name, ten dollars.
  - f. Filing a notice of transfer of a reserved name, ten dollars.
  - g. Filing a cancellation of reserved name, ten dollars.
  - h. Filing a consent to use of name, ten dollars.
  - i. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.
  - j. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability partnership affected by such change.
  - k. Filing a registered agent's consent to serve in such capacity, ten dollars.
  - l. Filing a resignation as registered agent, ten dollars.
  - m. Filing a notice of withdrawal, ten dollars.
  - n. Filing a certificate of fact stating a merger of a foreign limited liability partnership registered with the secretary of state, fifty dollars.
  - o. Filing any other statement of a limited liability partnership, ten dollars.
  - p. Filing any process, notice, or demand for service, twenty-five dollars.
2. The secretary of state shall charge and collect for:
- a. Furnishing a copy of any document, instrument, or paper relating to a limited liability partnership, one dollar for every four pages, or fraction thereof.
  - b. A certificate certifying a copy or reciting facts related to a limited liability partnership, twenty dollars.
  - c. Each page of any document or form sent by electronic transmission, one dollar.
- 45-22-23. Powers - Enforcement - Penalty - Appeal.
- 1. The secretary of state shall administer this chapter.
  - 2. The secretary of state may propound to any limited liability partnership subject to this chapter and to any partner, any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.
    - a. Any interrogatory must be answered within thirty days after mailing, or within any additional time fixed by the secretary of state.

The answers to the interrogatory must be full and complete and be made in writing and under oath.

b. If an interrogatory is directed:

- (1) To an individual, it must be answered by that individual; or
- (2) To a limited liability partnership, it must be answered by a managing partner.

c. The secretary of state need not file any document to which an interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that such document is not in conformity with this chapter.

d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers which disclose a violation of this chapter.

e. Each managing partner of a limited liability partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.

f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any facts or information obtained from an interrogatory except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, the secretary of state, within ten days after receipt of the document, shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection. That person may appeal to the district court of the county in which the registered office of the limited liability partnership is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

4. If the secretary of state revokes the registration of any foreign limited liability partnership, pursuant to section 45-22-16, the partnership may appeal to district court of the county where the registered office of the partnership in this state is situated by filing with the clerk of such court a petition setting forth a copy of its registration and a copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

45-22-24. Certificates and certified copies to be received in evidence.

1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability partnerships which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

45-22-25. Forms to be furnished by the secretary of state. All renewal registrations must be made on forms prescribed and furnished by the secretary of state. Upon request, the secretary of state shall furnish forms for all other documents to be filed in the office of the secretary of state. However, the use of these documents, unless otherwise specifically required by law, is not mandatory.

45-22-26. Audit reports and audit of limited liability partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited liability partnership that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability partnership, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable year of the limited liability partnership. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability partnership required to submit an annual report under this section.

45-22-27. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:
  - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.].
  - b. "Private limited liability partnership" means a limited liability partnership, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.
  - c. "Public corporation" means this state, any political subdivision of this state, any public agency of this state or any political subdivision of this state, or any corporate instrumentality of this state.
2. Any private limited liability partnership or public corporation may apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such

zones, in accordance with the Act of Congress and other applicable laws and rules.

**SECTION 28.** If House Bill No. 1110 does not become effective, section 45-22-02 of the North Dakota Century Code is created and enacted as follows:

45-22-02. Applicability of chapter 45-05. In any case not provided for in this chapter, chapter 45-05 governs. If any provision of this chapter conflicts with chapter 45-05, that provision of this chapter takes precedence.

**SECTION 29.** If House Bill No. 1110 is approved by the fifty-fourth legislative assembly and becomes effective, section 45-22-02 of the North Dakota Century Code is created and enacted as follows:

45-22-02. Applicability of chapters 45-13 through 45-21. In any case not provided for in this chapter, chapters 45-13 through 45-21 govern. If any provision of this chapter conflicts with chapters 45-13 through 45-21, that provision of this chapter takes precedence.

<sup>23</sup> **SECTION 30. REPEAL.** Sections 1-01-28 and 10-19.1-07 of the North Dakota Century Code and section 10-32-03 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 31. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 22, 1995  
Filed March 23, 1995

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<sup>23</sup> Section 1-01-28 was also repealed by section 80 of Senate Bill No. 2343, chapter 103.

**CHAPTER 56****SENATE BILL NO. 2071**

(Legislative Council)

(Interim Legislative Management Committee)

(Senators Wogsland, G. Nelson)

(Representatives Martinson, Oban)

**EFFECTIVE DATES OF LEGISLATION**

AN ACT to create and enact a new section to chapter 1-02 of the North Dakota Century Code, relating to effective dates of legislation; and to declare an emergency.

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

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

**Effective dates of legislation - Rules of construction.** In determining the effective date of any law enacted by the legislative assembly, a "measure" includes the entire contents of a legislative act, unless the legislative assembly specifically provides within the act that only a portion of the act is an emergency, appropriation, or tax measure. Unless a different date is specified in a measure, the measure takes effect on July first after its filing with the secretary of state if:

1. Any portion of the measure provides an appropriation for support and maintenance of state departments and institutions; or
2. Any portion of the measure:
  - a. (1) Provides for an enforced contribution for public purposes which is not dependent upon the will or consent of the person taxed;
  - (2) Imposes a fee for any purpose; or
  - (3) Authorizes a public official or entity to determine the level of a fee for any purpose; and
  - b. Changes any statutory factor that determines the amount of a taxpayer's liability for the contribution or fee, including a full or partial exemption or credit.

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

Approved February 7, 1995  
Filed February 8, 1995

**CHAPTER 57****SENATE BILL NO. 2293**

(Senator Mushik)  
(Representative Coats)

**GOLD STAR MOTHERS' DAY**

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to the designation of Gold Star Mothers' Day.

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

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

**Gold Star Mothers' Day.** Each year the governor shall issue a proclamation designating the last Sunday of September as Gold Star Mothers' Day in honor of mothers whose sons or daughters served and died in the line of duty in the armed forces of the United States of America or its allies, or died as a result of injury sustained in such service.

Approved March 7, 1995

Filed March 7, 1995

**CHAPTER 58****SENATE BILL NO. 2338**

(Senators Holmberg, Traynor)

**RECORDED INSTRUMENT VALIDATION**

AN ACT to amend and reenact section 1-04-01 of the North Dakota Century Code, relating to validation of recorded instruments.

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

**SECTION 1. AMENDMENT.** Section 1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**1-04-01. Execution, acknowledgment, filing, and recording legalized.** The execution, acknowledgment, filing, and recording of all deeds, leases, mortgages, assignments, satisfactions, and other written instruments ~~in writing~~ affecting the title to real property in this state, in good faith made, taken, or certified ~~prior to January 1, 1953~~, and which have been filed or recorded in the proper counties of this state; hereby for a period of five years or more, are declared to be legal and valid for all purposes, anything in the laws of ~~the this state of North Dakota~~, or of any other state, territory, or country at the time of ~~such~~ the execution, acknowledgment, filing, or recording to the contrary notwithstanding.

Approved April 11, 1995

Filed April 12, 1995



## CHAPTER 59

## HOUSE BILL NO. 1100

(Representative Olson)

(At the request of the Governor)

CAPITOL ARTS AND HISTORIC PRESERVATION  
ADVISORY COMMITTEE REPEALED

AN ACT to amend and reenact sections 1-08-04.1, 48-10-01, and 48-10-03 of the North Dakota Century Code, relating to duties of the council on the arts and membership and duties of the capitol grounds planning commission; to repeal chapter 48-11 of the North Dakota Century Code, relating to the capitol arts and historic preservation advisory committee; and to transfer the balance of the capitol arts and historic preservation advisory committee special operating fund to the general fund.

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

**SECTION 1. AMENDMENT.** Section 1-08-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**1-08-04.1.** State property having historical or artistic significance - Responsibilities of state historical board and council on the arts - Review and advice on property for exhibition. Except for the board of higher education and state institutions under the jurisdiction of the board, every state official or entity that, on behalf of the state, holds, acquires, or receives property having historical or artistic significance shall document and inventory that property on forms furnished by the state historical board. One copy of the completed form must be retained in the office of that official or entity and one copy must be filed with the state historical board. The information filed with the board must include a description of the property, the identity of the donor if acquired by gift, the date the property was acquired or received, any conditions on acceptance of the property if given by gift, and appropriate evidence of ownership. The information must also indicate whether the property is intended for permanent or long-term exhibition on the capitol grounds or in public areas in the state capitol. With respect to property intended for permanent or long-term exhibition on the capitol grounds or in public areas in the state capitol, the state historical board shall notify the state council on the arts. The council on the arts shall advise the capitol grounds planning commission with respect to permanent or long-term exhibition of such property on the capitol grounds or in public areas in the capitol. ~~The council on the arts shall advise the capitol arts and historic preservation advisory committee with respect to permanent or long-term exhibition of such property in public areas in the state capitol.~~ Prior to transfer of ownership or other disposal of property documented and inventoried under this section, that property must be offered to the state historical board for inclusion in its historical collections.

**SECTION 2. AMENDMENT.** Section 48-10-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**48-10-01.** Capitol grounds planning commission. The capitol grounds planning commission consists of the lieutenant governor as chairman and eight other members selected biennially ~~in a manner~~ as provided in this section. The governor shall appoint two ~~citizen~~ citizens, one licensed architect, and one representative from

the state historical society as members, the president of the senate shall appoint ~~three~~ two senators as members, and the speaker of the house of representatives shall appoint ~~three~~ two representatives as members. Appointment to the commission is for a term of two years. Legislative and citizen members of the planning commission are entitled to per diem payments and expenses in such amount and in the same manner as provided by law for members of the legislative council.

**SECTION 3. AMENDMENT.** Section 48-10-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**48-10-03. Powers and duties of the commission - Authority to accept gifts.** The capitol grounds planning commission shall confer with the state council on the arts with respect to the artistic value of monuments, memorials, or works of art to be constructed on the capitol grounds and with qualified consultants retained by it to select sites for buildings, facilities, monuments, memorials, or works of art to be constructed on the capitol grounds. The commission shall develop and modify long-term plans for the development of the capitol grounds. The commission shall approve or disapprove the basic style and exterior construction of any building, facility, monument, memorial, or work of art constructed on the capitol grounds. Except as otherwise provided by this section, the commission has exclusive authority to accept or reject gifts of any type or class of property for exterior placement on the capitol grounds or for the improvement of the exterior construction of any building or facility on the capitol grounds. No construction or placement of an item on the capitol grounds may be undertaken without the approval of the commission, unless the construction or placement is authorized by the legislative assembly. If the legislative assembly by law or resolution authorizes the construction or placement of an item on the capitol grounds, the commission shall approve the site, basic style, and exterior construction of the item within a reasonable period of time.

The commission shall advise the director of the office of management and budget and the legislative council on matters relating to the physical and aesthetic features of the interior of all buildings on the capitol grounds. The commission must be called in and shall meet whenever major interior changes, including new construction, remodeling, or renovation of any kind are proposed or considered for the buildings or facilities on the capitol grounds. The commission must be consulted before the purchase or installation of furniture or fixtures in public areas of the capitol and other buildings on the capitol grounds. The commission shall perform any other duties as may be prescribed by law.

**SECTION 4. REPEAL.** Chapter 48-11 of the 1993 Supplement to the North Dakota Century Code is repealed.

**SECTION 5. TRANSFER.** The state treasurer shall transfer the balance of the capitol arts and historic preservation advisory committee special operating fund to the state general fund on July 1, 1995. After June 30, 1995, the state treasurer shall deposit in the state general fund any moneys that would otherwise be deposited in the capitol arts and historic preservation advisory committee special operating fund.

Approved April 7, 1995  
Filed April 7, 1995

# AERONAUTICS

## CHAPTER 60

### HOUSE BILL NO. 1130

(Political Subdivisions Committee)

(At the request of the Office of Management and Budget)

## AIRPORT STATE ASSISTANCE

AN ACT to amend and reenact section 2-05-06.5 of the North Dakota Century Code, relating to state assistance for public airports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-06.5 of the North Dakota Century Code is amended and reenacted as follows:

2-05-06.5. State assistance for airports. Each public airport owned or operated by a public entity and each airport operated by an airport authority in this state which is served by at least one airline which is ~~certificated~~ certified by the ~~civil aeronautics board~~ federal aviation administration or was at one time served by an airline ~~certificated~~ certified by the ~~civil aeronautics board~~ federal aviation administration, but is served by a scheduled commuter airline ~~certificated~~ certified by the North Dakota aeronautics commission is ~~entitled to~~ may be provided assistance ~~as provided in this section according to guidelines established by the commission by rule~~, within the limits of legislative appropriations. ~~The amount of assistance to each airport enplaning twenty thousand or more passengers shall be in the same proportion that the number of enplaned passengers on United States certificated air carriers from that airport during the last calendar year for which information is available bears to the total number of enplaned passengers on all United States certificated air carriers at all of the airports in North Dakota enplaning twenty thousand or more passengers in that year. An airport eligible for assistance under this section which enplanes less than twenty thousand passengers in any one calendar year shall be paid not less than the sum of twenty-five thousand dollars at each distribution of assistance grants. The North Dakota aeronautics commission shall certify the number of enplaned passengers for each airport based upon information published in the airport activity statistics of United States certificated air carriers prepared jointly by the civil aeronautics board and the United States department of transportation for the most recent calendar year a publication is available. The North Dakota aeronautics commission shall determine the allocation to be made to each eligible airport on or before September first of each year and shall certify the amounts to the state treasurer. The state treasurer shall make payment on or before October first of each year. The governing body or airport authority which operates an airport entitled to that receives assistance under this section shall deposit the moneys received in the same account or accounts as other airport funds are deposited and may expend the moneys as provided by law for other airport funds, including matching any funds made available by the United States. These moneys must be used for airport construction or improvement projects including airport administration and terminal buildings; hangars; landing strips for aircraft; and purchase of sites for airports or landing fields and easements; and for~~

**maintenance, clearing of sites, marking, lighting, and engineering and navigational aids; all related to aeronautics.**

Approved March 6, 1995

Filed March 6, 1995

# AGRICULTURE

## CHAPTER 61

### HOUSE BILL NO. 1214

(Representatives Olson, Gerntholz)  
(Senator Nething)

### COUNTY FAIR LEVIES

AN ACT to amend and reenact sections 4-02-04, 4-02-08, 4-02-26, 4-02-27, 4-02-27.2, 4-02-27.3, 4-02-30, 11-23-09, 53-03-03, 53-04.1-04, 53-05-02, subsections 30 and 31 of section 57-15-06.7, and subsection 1 of section 57-15-06.8 of the North Dakota Century Code, relating to fairs, fair associations, carnivals, and amusements and property tax levies for fairs; and to repeal sections 4-02-03, 4-02-09, 4-02-11, 4-02-15, 4-02-32, 4-02-33, 4-02-34, and subsection 3 of section 57-15-06.7 of the North Dakota Century Code, relating to fairs.

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

**SECTION 1. AMENDMENT.** Section 4-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-02-04. Income and expenses - Membership in association and terms thereof.** An agricultural fair association may not be conducted for profit and may not have ~~no~~ capital stock. The bylaws of the association ~~shall~~ must provide for charges to the public for admission to the grounds, fees for concessions, charges to exhibitors, and rental of the association's property, and the amounts thereof may not be greater than is sufficient to discharge the association's debts for real estate and improvements thereon, to defray the current expenses of fairs, to carry on the business of the association, and to create a sinking fund in an amount not exceeding twenty thousand dollars. However, if the association is receiving property tax levy funds, the association with the consent of the board of county commissioners may establish a sinking fund in excess of twenty thousand dollars. The method of acquiring membership in the association, and the term of such membership, must be provided in the association's bylaws.

**SECTION 2. AMENDMENT.** Section 4-02-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-02-08. Organization under corporation laws.** A fair association may be organized by three or more persons as in the case of other corporations, with all the rights, privileges, and liabilities pertaining to corporations under the corporation laws of this state, including the rights and privileges specified in sections ~~4-02-03~~, 4-02-04, and 4-02-05.

**SECTION 3. AMENDMENT.** Section 4-02-26 of the North Dakota Century Code is amended and reenacted as follows:

**4-02-26. County fairs - Organized when - Aiding.** A county fair association may be organized in any county having taxable property of a taxable valuation of

not less than seven hundred fifty thousand dollars. The executive officers and directors must be residents of the county. The association may apply to the board of county commissioners of the county for a grant to aid in the erection of suitable buildings and other improvements to accommodate its patrons and exhibits, and to pay premiums and expenses that may be awarded on such exhibits at any fair. An application for the grant must be in writing and must state the incorporation of the association, the names and places of residence of all its executive officers, and the ownership of real property in the county sufficient in area for the purpose of its fair and of the value of at least twenty-five hundred dollars. If the board of county commissioners is satisfied that the statements in the application are true and that the association intends in good faith to hold a fair within the county annually for the exhibition of agricultural, horticultural, mechanical, and manufactured products of the county, and of such articles as are usually exhibited at fairs, it may levy for the first year's grant of aid a tax not exceeding the limitation in section 57-15-06.7 which must be collected as other taxes are collected. If the tax is levied, the board of county commissioners shall pay to the secretary of the association, not later than July thirty-first thereafter, the amount of the tax levied and shall take the receipt of the association therefor. The board of county commissioners may continue the levy under this section after the first year's grant of aid upon the board's own motion.

**SECTION 4. AMENDMENT.** Section 4-02-27 of the North Dakota Century Code is amended and reenacted as follows:

**4-02-27. Reports required of county fair associations - Tax levies for support thereof.** Any county fair association receiving the aid provided for in this chapter, at the regular meeting of the board of county commissioners held in the month of January following the holding of such county fair, shall make a full report to the board of all moneys received by it from all sources and of all disbursements. The report must show the amount of the debts and the amount of moneys in the treasury of the association, and the amount of any deficit after the payment of its expenses, and must contain an estimate of the amount, if any, which it will be necessary to raise above the estimated ordinary receipts of the association for the purposes of its fair for the ensuing year. The report and estimate must be verified by the oath of the president, or vice president, the secretary, treasurer, and a majority of the board of directors of the association. After the filing and approval of the report, the board of county commissioners shall levy a tax for the current year equal to the estimate contained in the association's report, if the report filed shows that the funds have been expended legally and if the levy is has been approved by the voters or the board of county commissioners, as required by law. The tax levied for the current year may not exceed the limitation in section 57-15-06.7, and the amount levied must be paid to the association as provided in section 4-02-26.

**SECTION 5. AMENDMENT.** Section 4-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-02-27.2. Additional levy in certain counties.** The board of county commissioners of any county ~~having a population in excess of twenty-five thousand, according to the latest federal decennial census;~~ shall, when petitioned by at least five percent of the qualified electors of the county, including qualified electors residing in at least one-half of the voting precincts of the county as determined by the number of votes cast in the county for the office of governor at the preceding general election, shall submit to the qualified electors of the county at any general election or special election called for such purpose, the proposition of authorizing the board of county commissioners to purchase or lease in the name of the county not to exceed two hundred forty acres [97.12 hectares] of real estate and to construct thereon such buildings and other improvements as may be deemed desirable for the conduct of a

county fair and authorizing the board of county commissioners, if the county general fund is deemed insufficient to provide funds therefor, to levy a tax not exceeding the limitation in subsection 2 of section 57-15-06.7. If a majority of the votes cast at the election are in favor of the proposition, including the proposed levy, the tax must be levied and collected as are other property taxes, with the proceeds to be placed into a fund to be known as the "county fair fund". The tax is in addition to any mill levy limitations provided by law, including the levies authorized by sections 4-02-27 and 4-02-27.1.

**SECTION 6. AMENDMENT.** Section 4-02-27.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-02-27.3. Disposition of property.** Any property used for county fair purposes may be sold by the board of county commissioners upon such terms and conditions as the board shall determine, and the proceeds of such sale shall be placed in the county fair fund and used exclusively for county fair purposes, provided that if the county fails to hold a fair within the county for two successive years, any property on hand may be sold and the proceeds of such sale, together with any other unexpended balance in the county fair fund may, at the discretion of the board of county commissioners, be transferred to the county general fund. The levy of the tax authorized by section 4-02-27.2, expenditures of the proceeds thereof, and the conduct of the fair shall be governed by the provisions of sections 4-02-06 through ~~4-02-34~~ 4-02-31 to the extent such sections are consistent with the provisions of section 4-02-27.2 and this section.

**SECTION 7. AMENDMENT.** Section 4-02-30 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-02-30. Tax ~~provided for~~ to be submitted to vote.** ~~Whenever~~ If the board of county commissioners has voted and ordered a tax levied in aid of an agricultural fair; ~~at the next general election the question of continuing the annual levy and collection of the tax must be submitted to a vote of the qualified electors of the county. The county auditor shall certify and give notice of the submission of the question as provided by law. The ballots to be used at the election shall be in the following form:~~

For tax in aid of county fair

Yes ☐

No ☐

~~If a majority of the ballots heretofore or hereafter cast on the question at any election is in favor of continuing the tax, the board of county commissioners shall continue the annual levy hereof as long as the provisions of section 4-02-29 are complied with and until otherwise directed as herein provided.~~

~~Whenever~~ and a petition is addressed to the board, asking the discontinuance of the tax and containing the signatures of the qualified electors of the county in a number equal to twenty percent of the total vote cast in the county at the last preceding general election, and the petition is filed in the office of the county auditor, the board shall submit to the qualified electors of the county at the next succeeding general election the question of whether or not the levying of the tax shall be continued. The ballot must be in the following form:

Shall the board of county commissioners continue the annual levy of a tax in aid of county fair?

Yes ☐

No ☐





1. The location where the game is conducted by the person has been authorized as provided in section 53-04.1-05.
2. The person conducting the game has been issued a license pursuant to this chapter and prominently displays the license at the playing area of the game.
3. Games of chance other than the licensed game are not conducted or engaged in at the amusement concession.
4. The game is posted and the cost to play the game does not exceed ~~one dollar~~ five dollars.
5. A prize is not displayed which cannot be won.
6. Cash prizes in excess of five dollars are not awarded and merchandise prizes are not repurchased.
7. The game is not operated on a build-up or pyramid basis except a trade up of a prize is allowed.
8. ~~The actual retail value of any prize does not exceed twenty-five dollars. If a prize consists of more than one item, unit, or part, the aggregate retail value of all items, units, or parts may not exceed twenty-five dollars.~~
9. Concealed numbers or conversion charts are not used to play the game and the game is not designated or adapted with any control device to permit manipulation of the game by the operator to prevent a player from winning or to predetermine who the winner will be. The object target, block, or object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.
- ~~10.~~ 9. The game is conducted in a fair and honest manner.
10. A person under the age of eighteen may not play any amusement game or device, except bingo, in which cash prizes are awarded.

SECTION 11. AMENDMENT. Section 53-05-02 of the North Dakota Century Code is amended and reenacted as follows:

53-05-02. ~~Outdoor show and carnival~~ Carnivals - When prohibited - Exceptions. ~~No~~ A person may not conduct any ~~outdoor show~~, circus, or carnival; in any city, or within a radius of ~~six~~ thirty miles [~~9.66~~ 48.28 kilometers] of any city, within this state, at or near which any state, county, or district fair association operates an agricultural and livestock exposition or fair, within a period of ~~eighteen~~ thirty days next preceding the date advertised and set for such exposition or fair, nor during the time of holding the same unless:

1. The officials of such fair or exposition consent to the holding thereof; ~~or~~
2. Such ~~show~~, circus, or carnival is held in conjunction with such fair or exposition; or some other civic-sponsored festival or outdoor event; or
3. The circus or carnival is held outside the boundaries of the county in which the fair or exposition is held.

Nothing in this section ~~contained~~ exempts such ~~outdoor show~~, circus, or carnival from obtaining a proper license or permit, as provided by law, for the holding thereof.

<sup>24</sup> **SECTION 12. AMENDMENT.** Subsections 30 and 31 of section 57-15-06.7 of the North Dakota Century Code are amended and reenacted as follows:

30. Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding ~~one-half of~~ one mill.
31. Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding ~~one mill~~ and one-half mills.

**SECTION 13. AMENDMENT.** Subsection 1 of section 57-15-06.8 of the North Dakota Century Code is amended and reenacted as follows:

1. Counties levying a tax for multicounty fairs according to section 4-02-37 may levy a tax not exceeding ~~one-half of~~ one mill.

<sup>25</sup> **SECTION 14. REPEAL.** Sections 4-02-03, 4-02-09, 4-02-11, 4-02-15, 4-02-32, 4-02-33, 4-02-34, and subsection 3 of section 57-15-06.7 of the North Dakota Century Code are repealed.

Approved March 31, 1995

Filed March 31, 1995

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<sup>24</sup> Section 57-15-06.7 was also amended by section 2 of House Bill No. 1333, chapter 553, and section 14 of House Bill No. 1214, chapter 61, which repealed subsection 3.

<sup>25</sup> Section 57-15-06.7 was also amended by section 2 of House Bill No. 1333, chapter 553, and section 12 of House Bill No. 1214, chapter 61.

# AGRICULTURE

## CHAPTER 62

### SENATE BILL NO. 2283

(Senators Nalewaja, G. Nelson, Streibel)

(Representatives Byerly, Payne, Wald)

## NORTHERN CROPS INSTITUTE, NDSU EXTENSION SERVICE, AND AGRICULTURAL EXPERIMENT STATION APPROPRIATIONS

AN ACT to create and enact a new subsection to section 4-14.2-01 of the North Dakota Century Code, relating to funds appropriated to the northern crops institute; and to amend and reenact sections 4-05.1-02 and 4-08-10 of the North Dakota Century Code, relating to funds appropriated to the North Dakota state university extension service and agricultural experiment station.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-05.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-05.1-02. Agricultural experiment station.** The North Dakota agricultural experiment station is under the control of and subject to the supervision of the state board of higher education. The agricultural experiment station shall develop research programs involving the basic and applied biological, physical, and social sciences that will enhance agricultural systems and improve the quality of life. Funds appropriated to the agricultural experiment station may not be commingled with funds appropriated to North Dakota state university. Appropriation requests to defray expenses of the agricultural experiment station must be separate from appropriation requests to defray expenses of North Dakota state university.

**SECTION 2. AMENDMENT.** Section 4-08-10 of the North Dakota Century Code is amended and reenacted as follows:

**4-08-10. County agent to submit monthly account of expenditures.** ~~As The~~ county agent shall submit monthly an accurate itemized account of all expenditures incurred by the county agent in the regular conduct of ~~his~~ duties ~~must be submitted monthly by him to the extension division of the North Dakota state university of agriculture and applied science~~ extension service for examination and audit. Where charges are made by a county agent for money expended in the performance of official duties, all items of one dollar or more so expended and charged for must be covered by a subvoucher or receipt which must be signed by the person to whom the money was paid. The subvoucher or receipt must show at what place, on what date, and for what, the money expended was paid. The subvouchers or receipts must be forwarded with the bill, claim, account, or demand against the county. Where charges are made for transportation expenses, they must not exceed the amounts provided by section 11-10-15, and must be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose thereof, verified by his affidavit. ~~Such~~ The account must be transmitted and recommended for payment by

the ~~extension division of the North Dakota state university of agriculture and applied science~~ extension service which shall audit the same and which may approve or disallow any expense item therein. The ~~extension division of the North Dakota state university of agriculture and applied science~~ extension service is under the control, and subject to the supervision, of the state board of higher education. Funds appropriated to the North Dakota state university extension service may not be commingled with funds appropriated to North Dakota state university. An appropriation request to defray expenses of the North Dakota state university extension service must be separate from an appropriation request to defray expenses of North Dakota state university.

SECTION 3. A new subsection to section 4-14.2-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Funds appropriated to the northern crops institute may not be commingled with funds appropriated to North Dakota state university. Appropriation requests to defray expenses of the northern crops institute must be separate from appropriation requests to defray expenses of North Dakota state university.

Approved March 21, 1995

Filed March 23, 1995

## CHAPTER 63

## SENATE BILL NO. 2522

(Senators Wanzek, Krauter)

(Representative Nicholas)

## SEED LABELING AND WEED SEEDS

AN ACT to amend and reenact subsection 13 of section 4-09-01, subdivision a of subsection 1 of section 4-09-10, and subsection 2 of section 4-09-14 of the North Dakota Century Code, relating to the definition of noxious weed seeds, to seed labeling requirements, and prohibited acts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 13 of section 4-09-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. "Noxious weed seeds" means the seeds of either of the following classifications:
  - a. "Prohibited noxious weed seeds" means the seeds of perennial weeds which reproduce by seed or spread by underground roots, stems, and other reproductive parts and which, when established, are highly destructive and difficult to control by ordinary good cultural practice including the seeds of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* L.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*centaurea picris* pall), absinth wormwood (*artemisia absinthium*), hemp (*cannabis sativa*), musk thistle (*carduus nutans*), spotted knapweed (*centaurea maculosa* Lam.), and hoary cress (*cardaria draba* L.).
  - b. "Restricted noxious weed seeds" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means, including the seeds of dodder (*cuscuta* species), ~~wild mustard (*sinapis arvensis* syn. *brassica kaber*)~~, ~~field pennycress (*thlaspi arvense*)~~, hedge bindweed (*convolvulus sepium*), wild oats (*avena fatua*), and quackgrass (*agropyron repens* L. Beauv.).

**SECTION 2. AMENDMENT.** Subdivision a of subsection 1 of section 4-09-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. In seeds of wheat, durum, barley, oats, rye, soybeans, edible beans, and flax the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. Variety identification is not required for seeds labeled "for vegetative cover only".

**SECTION 3. AMENDMENT.** Subsection 2 of section 4-09-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Further, it~~ It is unlawful for any person in this state to:
- a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
  - b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
  - c. Hinder or obstruct in any way any authorized person in the performance of his duties under this chapter;
  - d. Fail to comply with a "stop-sale" order;
  - e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;
  - f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
  - g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner or his agent, and only for the purpose specified in such written permission; ~~or~~
  - h. Use the name of the state seed department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
  - i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

Approved March 27, 1995  
Filed March 28, 1995

**CHAPTER 64****HOUSE BILL NO. 1356**

(Representative Nicholas)

**POTATO CROP QUANTITY AND QUALITY LIABILITY**

AN ACT to amend and reenact section 4-10-12.1 of the North Dakota Century Code, relating to liability for potato crop quantity and quality.

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

**SECTION 1. AMENDMENT.** Section 4-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

4-10-12.1. Liability of the state seed commission, state seed department, commissioner and his employees, and certified seed potato producers - Potato crop quantity and quality. The state seed commission, state seed department, commissioner and ~~his~~ the commissioner's employees, ~~and~~ certified seed potato producers, and wholesale potato dealers licensed under chapter 4-11 make no warranty of any kind, expressed or implied as to the quantity or quality of the crop produced from the seed potatoes or through other produce inspected and certified, including merchantability, fitness for a particular purpose, or absence of disease. The only representation is that the potatoes or other produce were produced, graded, packed, and inspected under the rules ~~and regulations~~ of the state seed department or United States department of agriculture. The commissioner and ~~his~~ the commissioner's employees function and serve only in an official regulatory manner.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 65

### HOUSE BILL NO. 1196

(Representatives Johnson, Kempenich, Rennerfeldt)  
(Senator Wanzek)

### OILSEED COUNCIL MEMBERSHIP

AN ACT to amend and reenact section 4-10.2-03 of the North Dakota Century Code, relating to membership on the oilseed council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-10.2-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-10.2-03. North Dakota oilseed council - Membership - Election - Term.** There is hereby established a North Dakota oilseed council. The council is composed of one participating sunflower grower elected from each of the districts established in section 4-10.2-04, one participating safflower grower appointed by the governor, one participating rapeseed or canola grower appointed by the governor, one participating flax grower appointed by the governor, and one member appointed by the director of the agricultural experiment station. ~~The members appointed by the governor must be selected from a list of at least three names for each industry submitted by the commissioner.~~ The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council. Every elected and appointed council member must be a citizen of the state. Every elected member must be a bona fide resident of and participating sunflower grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and two members must be elected for a one-year term as designated by the commissioner. The term of the representative for district seven must coincide with the term of the representative for district six. The term of each appointed member is three years and begins on April first of the year of the appointment, except that initially the flax grower member must be appointed for a three-year term, the member designated by the director of the agriculture experiment station and the safflower grower member must be appointed for a two-year term, and the rapeseed or canola grower must be appointed for a one-year term. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the North Dakota state university extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. All elections must be conducted within seventy-five days prior to April first. No elected or appointed member of the council is eligible to serve more than three consecutive three-year terms.

Approved March 24, 1995  
Filed March 27, 1995



**CHAPTER 66****HOUSE BILL NO. 1124**

(Representative Dorso)

**AGRICULTURAL COMMODITY GROUP REPORTS,  
TAXES, AND REFUNDS**

AN ACT to create and enact a new section to House Bill No. 1134, as approved by the fifty-fourth legislative assembly, relating to declaring an emergency relating to funding for ethanol production subsidies; to amend and reenact sections 4-10.4-08, 4-10.4-09, 4-24-10, 4-28-07, and 4-28-08 of the North Dakota Century Code, relating to agricultural commodity group reports, commodity taxes, and refunds; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 4-10.4-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-08. Tax levied.**

1. A tax at the rate of five mills per bushel [35.24 liters] must be levied and imposed upon all barley grown in the state, delivered into the state, or sold to a first purchaser in the state. This tax is due upon any identifiable lot or quantity of barley.
2. Every first purchaser of barley shall collect the tax imposed by this section by charging and collecting from the seller the tax at the rate of five mills per bushel [35.24 liters] by deducting the tax from the purchase price of all barley subject to the tax and purchased by the first purchaser.
3. Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of barley, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council by the twentieth day of each calendar quarter stating the quantity of barley received, sold, or shipped by it, except that if less than twenty-five thousand bushels [880.98 cubic meters] have been purchased, in any calendar quarter, the tax may be reported and remitted with the following quarter's return, provided that all taxes collected must be remitted at least annually. The remittance of the tax as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "barley fund" to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.
4. The tax provided for by this section must be deducted as provided by this chapter whether the barley is stored or sold in this or any other state, but if agreements have not been made with dealers and first purchasers outside of the state for collecting the tax, the grower shall

remit the tax to the council on all barley sold by ~~him~~ the grower outside the state.

**SECTION 2. AMENDMENT.** Section 4-10.4-09 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-09. Nonparticipating growers - Refunds.**

1. Any ~~person~~ grower who sells barley to a first purchaser in this state and who is subject to the tax provided in this chapter and who objects to the collection of the tax, may within sixty days following the collection, make application by personal letter to the council for a refund application blank. Upon return of this blank, properly executed by the applicant and accompanied by a true copy of the invoice or invoices delivered by the purchaser to the grower, the council shall; ~~within sixty days after receiving the application,~~ refund to the grower the net amount of the tax collected. If no request for refund is made within sixty days after the collection of the tax, the grower is conclusively presumed to have agreed to the deduction. However, a grower, for any reason, having paid the tax more than once on the same barley, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.
2. The council shall develop and disseminate information and instructions relating to the purpose of the barley tax and the manner in which refunds may be claimed, and shall cooperate with state and federal governmental agencies and private businesses engaged in the purchase of barley.

**SECTION 3. AMENDMENT.** Section 4-24-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents.** Between the first and tenth legislative day of each regular legislative session, the North Dakota potato council, the North Dakota oilseed council, the North Dakota edible bean council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk stabilization board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. ~~The~~ Each report must contain a ~~summarization~~ summary of the activities of the ~~respective~~ commodity ~~groups~~ group during the ~~preceding current~~ current biennium, ~~and must include a financial~~ single page uniform statement ~~summarizing the~~ of revenues and expenditures ~~of for the respective agricultural commodity group for the current next biennium. Each report, except the reports of the North Dakota beekeepers association and the anticipated North Dakota turkey federation, must also include a state auditor's report on the commodity group's single page uniform statement of revenues and expenditures for the next biennium previous two fiscal years.~~

**SECTION 4. AMENDMENT.** Section 4-28-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-28-07. Wheat tax levy.** A tax of five mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels by a producer to a first purchaser in this state. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] are not accurately determined at the time of the lien, pledge, or mortgage. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in such manner as the commission may prescribe.

Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided in this chapter may, within sixty days following such deduction or final settlement, make application by personal letter to the wheat commission for a refund application blank. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to such deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, is entitled to a refund of the overpayment.

The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.

**SECTION 5. AMENDMENT.** Section 4-28-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-28-08. State wheat commission fund - Continuing appropriation.** Each first purchaser shall make quarterly reports and returns to the commission, on ~~such forms as must be prescribed by the commission~~, on or before the twentieth day of the month next succeeding each calendar quarterly period, commencing with the calendar quarter ending September 30, ~~1959~~, and with 1995. The commission shall prescribe the forms to be used. With each ~~such~~ report and return, the first purchaser shall remit to the commission, in the form of a remittance payable to the state treasurer, the tax due. The commission shall transmit all such payments to the state treasurer to be deposited in the state treasury to the credit of a special revolving fund ~~to be known as the "state wheat commission fund"~~. All money in the state wheat commission fund is appropriated on a continuing basis to the commission for carrying out the purposes of this chapter. Expenditures from ~~such the~~ fund may be made upon vouchers duly approved by the commission to carry out ~~the provisions~~ of this chapter. Regular audits of the commission's accounts must be conducted in accordance with chapter 54-10.

**SECTION 6.** A new section to House Bill No. 1134, as approved by the fifty-fourth legislative assembly, is created and enacted as follows:

**SECTION 5. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 11, 1995  
Filed April 12, 1995

## CHAPTER 67

## HOUSE BILL NO. 1177

(Representatives Aarsvold, Belter)

(Senators Lindaas, Naaden)

## SOYBEAN PROMOTION ASSESSMENTS

AN ACT to amend and reenact sections 4-10.5-07 and 4-10.5-08 of the North Dakota Century Code, relating to assessments for soybean promotion.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.5-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-10.5-07. Tax levies - Collection - Reports.** Effective ~~July 1, 1985~~ August 1, 1995, an assessment at the rate of ~~two cents per bushel [35.24 liters]~~ one-half of one percent of the value of the sale must be levied and imposed upon all soybeans ~~grown in the state or~~ sold to a designated handler. This assessment is due upon any identifiable lot or quantity of soybeans.

A designated handler of soybeans shall file an application with the council on forms prescribed and furnished by the council. The forms must contain the name under which the designated handler is transacting business within the state, the designated handler's places of business, the location of loading and shipping places of agents of the designated handler, the names and addresses of the several persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state, and, if a limited liability company, the limited liability company name and the names and addresses of its principal managers and agents within this state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any soybeans until it has furnished a certificate as required by this section.

Every designated handler of soybeans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of ~~two cents per bushel [35.24 liters]~~ one-half of one percent of the value of the sale by deducting the assessment from the purchase price of all soybeans subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of soybeans, which may be examined by the council at all reasonable times. Every designated handler shall report to the council, in a manner and at a time prescribed by the council, stating the quantity in individual and total amounts of soybeans received, sold, or shipped by it. The report must state from whom each individual amount was received. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid within thirty days of the end of each quarterly period to the council for deposit in the state treasury to the credit of an account designated "soybean fund" to be used exclusively to carry out this chapter. Quarterly periods end on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Regular audits of the council's

accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

**SECTION 2. AMENDMENT.** Section 4-10.5-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.5-08. Nonparticipating growers - Refunds.** Any grower subject to the assessment provided by this chapter may, within ~~sixty~~ ninety days following such assessment or final settlement, make application by personal letter to the council for a refund application blank. Upon the return of the refund application blank, if it is properly executed by the grower, returned within sixty days of the date it was mailed to the grower, and accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund is made within the period prescribed above then the grower is presumed to have agreed to the assessment. However, a grower, for any reason, having paid the tax more than once on the same soybeans, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the soybean tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies and private businesses engaged in the purchase of soybeans.

Approved March 27, 1995

Filed March 28, 1995

## CHAPTER 68

HOUSE BILL NO. 1343  
(Representative Nicholas)

## CORN UTILIZATION COUNCIL ELECTIONS

AN ACT to amend and reenact section 4-10.6-02 of the North Dakota Century Code, relating to membership elections of the North Dakota corn utilization council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.6-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-10.6-02. North Dakota corn utilization council - Members - Election - Term.** The North Dakota corn utilization council must be composed of one member elected from each district established by section 4-10.6-03. The chairman of the council must be a member of the council elected by a majority vote of the council. Each member must be a resident of and participating grower in the district the member represents. The term of each member is four years, beginning on April first of the year of election, except that initially three members must be elected for four-year terms; two members must be elected for three-year terms; and two members must be elected for two-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications required by this chapter, the member's office is deemed vacant and the council shall appoint a qualified participating grower from any district to complete the term of office. ~~For the initial council, the North Dakota corn growers association shall nominate two candidates for each position. Each candidate must be supported by a petition bearing the signatures of twenty-five growers from the candidate's district. Additional candidates may be nominated by written petition of twenty-five growers from the respective district. A list of all the candidates must be presented to the commissioner who shall cooperate with the cooperative extension service and hold the first election no later than August 15, 1991. The council shall administer all elections thereafter, and may request the assistance of the commissioner. Beginning in 1993, the elections~~ Elections must be conducted no later than April first of each year. ~~Prior to~~ Before the expiration of a member's term, the council shall appoint a nominating committee made up of ~~three~~ participating growers who reside in the member's district. The committee shall nominate ~~two~~ a resident participating growers grower as ~~candidates~~ a candidate for the office. ~~Each candidate must be supported by a petition bearing the signatures of twenty-five growers from the candidate's district.~~ Additional candidates may be nominated by a written petition of ~~twenty-five~~ five growers from the district. No council member may serve more than two consecutive four-year terms. When a member's office is vacant, the council, before beginning the nominating process, shall ~~publish~~ notify growers of the vacancy and pending election by letter or by publishing a conspicuous notice of the vacancy, in the official newspaper of every county in the district.

Approved April 4, 1995  
Filed April 4, 1995

## CHAPTER 69

## SENATE BILL NO. 2195

(Agriculture Committee)

(At the request of the Milk Stabilization Board)

## MILK MARKETING BOARD

AN ACT to amend and reenact subsection 2 of section 4-18.1-03, subsections 1, 2, 6, and 7 of section 4-18.1-04, sections 4-18.1-12, 4-18.1-17, subsection 2 of section 4-18.1-18, and section 4-18.1-22 of the North Dakota Century Code, relating to renaming the milk stabilization board the milk marketing board, the executive officer of the milk marketing board, and assessments by the milk marketing board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 4-18.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Board" means the state agency created by this chapter, to be known as the North Dakota milk ~~stabilization~~ marketing board.

**SECTION 2. AMENDMENT.** Subsections 1, 2, 6, and 7 of section 4-18.1-04 of the North Dakota Century Code are amended and reenacted as follows:

1. There is hereby created a milk ~~stabilization~~ marketing board to consist of five members appointed by the governor. The board consists of one person who is a dairy farmer selling to a processor, who must be selected by the governor from two names submitted to ~~him~~ the governor by the North Dakota milk producers association; one person who is a processor, who must be selected by the governor from two names submitted to ~~him~~ the governor by the North Dakota dairy industries association; one person who is a retailer, who must be selected by the governor from two names submitted to ~~him~~ the governor by the North Dakota association of food retailers; and two persons must be selected by the governor who are consumers, and who are not otherwise engaged in the milk business. ~~No~~ An appointee may ~~not~~ have held elective or appointive public office during the period of two years immediately preceding ~~his~~ appointment and ~~no~~ an appointee may ~~not~~ hold any other public office, either elective or appointive, during ~~his~~ the term of office as a member of the board. Not more than three members of the board may, at the time of the appointment or thereafter during their respective terms of office, reside on the same side of a continuous line following the eastern boundaries of Bottineau, McHenry, Wells, Kidder, Logan, and McIntosh Counties.
2. The members of ~~said milk stabilization~~ the board must be appointed within thirty days after passage and approval of this chapter. The term of office of one member expires on July 1, 1968; the term of office of one member expires on July 1, 1969; the term of office of one member expires on July 1, 1970; the term of office of one member expires on July 1, 1971; the term of office of one member expires on July 1, 1972;



and each succeeding member holds ~~his~~ office for a term of five years and until ~~his~~ a successor has been appointed and qualified. Any vacancy must be filled by appointment by the governor ~~as heretofore stated~~.

6. The board shall employ ~~an executive secretary~~ a director who ~~shall serve~~ serves under the direction and at the pleasure of the board and whose qualifications, ~~and~~ duties, and compensation must be determined by the board. The ~~executive secretary~~ director shall serve as financial officer of the board and is authorized to accept money paid to the board in accordance with this chapter. Before ~~entering upon the discharge of his duties~~ beginning employment, ~~he~~ the director shall execute and file a bond in an amount as may be fixed by the board or as may be provided by law for public officers.
7. The board shall employ, in addition to the ~~executive secretary~~ director, such assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board under ~~the provisions of~~ this chapter. The board shall determine the qualifications, duties, and compensation of such employees. The board may employ a licensed attorney of the state of North Dakota as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing, economic research, and other technical services, whenever it determines that such services are needed.

**SECTION 3. AMENDMENT.** Section 4-18.1-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-18.1-12. Assessments by the board - Continuing appropriation.** In order to obtain funds for the administration and enforcement of the provisions of this chapter, the board shall levy an assessment upon all licensed processors of not more than eight twelve cents per hundredweight [45.36 kilograms] after June 30, 1995, and before July 1, 1997, on milk or milk equivalents used for the manufacture of milk products and frozen dairy products processed by such processors. The board shall levy an assessment of not more than thirteen cents per hundredweight [45.36 kilograms] after June 30, 1997, and before July 1, 1999, and not more than fourteen cents per hundredweight [45.36 kilograms] after June 30, 1999. However, this assessment is not applicable to milk products or frozen dairy products sold in other states.

This assessment must be paid quarterly on or before the fifteenth of July, October, January, and April of each year. Each such payment must be equal to the assessment due in connection with milk products and frozen dairy products processed during the calendar quarter which ends on the last day of the preceding month.

All such assessments must be deposited by the board in the state treasury in a special revolving fund to be known as the "milk ~~stabilization~~ marketing fund". All expenses incurred in connection with the enforcement and administration of this chapter, including the salaries of employees and assistants must be paid out of the said "milk ~~stabilization~~ marketing fund". All money in the milk ~~stabilization~~ marketing fund is appropriated on a continuing basis to the board for carrying out the purposes of this chapter. Regular audits of the board's accounts must be conducted in accordance with chapter 54-10.

**SECTION 4. AMENDMENT.** Section 4-18.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**4-18.1-17. Remedies.**

1. The board may refuse to license or may suspend or revoke the license of any person, except a dairy farmer, who violates any provision of this chapter, any provision of a stabilization plan issued by the board, or any ~~regulation rule~~ issued by the board. In lieu of a suspension or revocation the board may assess a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation, and may collect such civil penalty by a civil proceeding in any appropriate court. Any moneys received by the board as the result of an election by a licensee to pay a penalty in lieu of a license suspension must be placed in the milk ~~stabilization~~ marketing fund. Such penalties must be construed as civil and not criminal in nature.
2. The board or its authorized agent may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this chapter or to enforce compliance with any stabilization plan or regulation of the board or to obtain a judicial interpretation of any of the foregoing; and, in addition to any other remedy, the board, upon approval by a majority of its members, may apply to the district court for relief by injunction, mandamus, or any other appropriate remedy in equity. In such actions the board is not required to give or post bond in any action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name of the North Dakota milk ~~stabilization~~ marketing board, a state agency.

**SECTION 5. AMENDMENT.** Subsection 2 of section 4-18.1-18 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Whenever the ~~executive secretary~~ director has reason to believe that a licensee has violated this chapter or any ~~regulation rule~~ or stabilization plan issued by the board, ~~he~~ the director may file a complaint against such licensee with the board and shall serve a copy of the complaint on the licensee in which ~~he~~ the director shall set forth the nature of the alleged violation. The board after a hearing and after finding that the licensee has violated any provisions of this chapter, a provision of a stabilization plan or a ~~regulation rule~~ issued by the board may suspend or revoke ~~his~~ the licensee's license.

**SECTION 6. AMENDMENT.** Section 4-18.1-22 of the North Dakota Century Code is amended and reenacted as follows:

4-18.1-22. **Local advisory boards.** Whenever a public hearing is scheduled by the ~~milk stabilization~~ board in any marketing area for the purpose of establishing prices, the board may, at least ten days prior to the date set for such hearing, appoint a local advisory board, the function of which is to assist and advise the ~~milk stabilization~~ board in matters pertaining to the production and marketing of milk in said marketing area. If a local advisory board is appointed, the local advisory board shall consist of two producers, two processors, and two retailers who are actively engaged in milk production, processing, and marketing in the area. Such local advisory board shall meet with the ~~milk stabilization~~ board at the call of the ~~milk stabilization~~ board before, during, or after such public hearing to establish prices. The members of such local advisory board shall receive twenty-five dollars per diem for each day actually spent in the performance of such duties, plus mileage and expenses in an amount equal to that received by state officers. In no event may there be more than three meetings or conferences between the ~~milk stabilization~~ board and such local advisory board; and in all events such local advisory board shall cease to exist when the ~~milk stabilization~~ board promulgates its stabilization plan established prices following the public hearing heretofore mentioned.

Approved April 11, 1995

Filed April 12, 1995

## CHAPTER 70

## HOUSE BILL NO. 1313

(Representatives Sveen, Froseth)

(Senator O'Connell)

## STATE FORESTER DUTIES AND NURSERY LOCATION

AN ACT to create and enact a new section to chapter 4-19 of the North Dakota Century Code, relating to the powers of the state forester; to amend and reenact sections 4-19-01, 4-19-02, and 4-19-03 of the North Dakota Century Code, relating to the duties of the state forester, the state nursery, and the distribution of planting stock; and to repeal sections 4-19-01.1 and 4-19-04 of the North Dakota Century Code, relating to the qualifications of district foresters and assistance provided by the state forester.

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

**SECTION 1. AMENDMENT.** Section 4-19-01 of the North Dakota Century Code is amended and reenacted as follows:

**4-19-01. State forester - Appointment - Qualifications - Duties.** The board of higher education shall appoint the state forester.

1. The state forester must be a graduate of an accredited school of forestry with a minimum education of a bachelor of science degree in forestry. The office of the state forester must be located in Bottineau. The state forester shall serve as the director of the state forest service and, subject to the approval of the board of higher education and the president of North Dakota state university, may employ assistants and secure office facilities and equipment necessary for the administration of this chapter and the performance of the powers and duties of the office.
2. The state forester shall:
  - a. Have general supervision of the raising and distribution of seeds and forest tree planting stock as provided in this chapter.
  - b. Promote practical forestry, and compile and disseminate information relative to practical forestry to landowners, community groups, schools, and other organizations interested in forestry.
  - c. Publish the results of work by issuing and distributing bulletins, lecturing before farmers' institutes and other organizations interested in forestry, and in other ways as will reach the public. Encourage the development, use, and wise stewardship of forest resources.
  - d. Provide assistance to landowners, producers, and public bodies relating to forestry, reforestation, protection of forest resources, prevention and suppression of fires, planting of trees and shrubs, and the growing, harvesting, marketing, and management of forest resources.

**SECTION 2. AMENDMENT.** Section 4-19-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-19-02. State nursery - Maintenance - Purpose.** A state nursery, under the direction of the state forester, must be maintained ~~in connection with the state school of forestry at Towner~~. The nursery shall propagate seeds and forest tree planting stock adapted to the climatic conditions of this state.

**SECTION 3. AMENDMENT.** Section 4-19-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-19-03. Distribution of seeds and planting stock.** Seeds and planting stock from the state nursery may be distributed by the state forester to citizens and landowners of this state upon payment by them of a price not greater than one hundred ten percent of the cost to the state of production in the case of planting stock or collection in the case of seeds, and the cost of transportation from the nursery; ~~except that planting stock distributed for the specific purpose of highway beautification plantings may be distributed free of charge.~~ The seeds and planting stock may be used to establish or reestablish forests, windbreaks, shelterbelts, living snow fences, farm woodlots, Christmas tree plantings, wildlife habitats, and other conservation tree plantings, and for erosion control and water quality management.

**SECTION 4.** A new section to chapter 4-19 of the North Dakota Century Code is created and enacted as follows:

Powers - Cooperative state agreements. Under the general supervision of the board of higher education, the state forester is authorized to:

1. Establish procedures for the administration of this chapter.
2. Provide grants to, and enter into cooperative agreements with, public and private entities for purposes consistent with this chapter.
3. Establish councils to advise the state forester on the administration of this chapter.

**SECTION 5. REPEAL.** Section 4-19-04 of the North Dakota Century Code and section 4-19-01.1 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved April 3, 1995  
Filed April 3, 1995

## CHAPTER 71

## SENATE BILL NO. 2151

(Senators Tomac, Solberg, Wanzek)

(Representatives Kerzman, Brown)

(At the request of the North Dakota Beef Commission)

## BEEF COMMISSION MEMBERSHIP AND PURPOSES

AN ACT to create and enact a new subsection to section 4-34-05 of the North Dakota Century Code, relating to beef promotion; and to amend and reenact subsection 2 of section 4-34-01, sections 4-34-02, 4-34-03, 4-34-04, and 4-34-11 of the North Dakota Century Code, relating to the North Dakota beef commission.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 4-34-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. To support beef promotion, research, and educational education activities of the national ~~livestock and meat board and its beef industry council~~ promotion and marketing organizations with not less than fifty percent of the assessments collected.

**SECTION 2. AMENDMENT.** Section 4-34-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-34-02. Definitions.** Unless the context otherwise requires:

1. "Beef producer" means any person or firm engaged in the production of cattle.
2. "Cattle" means live domesticated bovine animals regardless of age.
3. "Cattle feeder" means any person or firm engaged in the growing of cattle or finishing of cattle for slaughter.
4. "Commission" means the North Dakota beef commission.
5. "Dairy producer" means any person or firm engaged in the production and sale of milk from cows.
6. "Livestock auction markets" has the same definition as contained in subsection 2 of section 36-05-01.
7. "Livestock dealer" has the same definition as contained in section 36-04-01.
8. "~~Livestock terminal markets~~" means the public livestock market located at ~~West Fargo and known as the West Fargo stockyards.~~

9. "Person" includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, and any and all other business units.

~~10.~~ 9. "Selling agency" means any person engaged in the business of buying or selling in commerce livestock on a commission basis.

**SECTION 3. AMENDMENT.** Section 4-34-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-34-03. North Dakota beef commission - Appointments - Vacancies - Qualifications.** There is hereby created a North Dakota beef commission consisting of nine members who must be appointed by the governor. The commission must be composed of three beef producers, one cattle feeder, one dairy producer, one public livestock market representative, and three representatives at large. The commission may also appoint up to two nonvoting ex officio members.

Three initial members must be appointed for one year; three members must be appointed for two years; and three members must be appointed for three years. All subsequent members must be appointed for three years unless the appointment is to fill a vacancy in which case such appointment must be for the unexpired term. No members may serve more than two successive three-year terms. In the event a position on the commission becomes vacant for any reason, the unexpired term of such position must be filled in the same mode and manner as the original appointments.

Each member must be a citizen and a resident of this state, must be or have been actually engaged in that phase of the cattle industry ~~he~~ the member represents for a period of five years, and must have during that period derived a substantial portion of ~~his~~ the member's income therefrom.

**SECTION 4. AMENDMENT.** Section 4-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-34-04. Nomination of members.** With the exception of the representatives at large, who must be of the governor's own choosing, the members of the commission must be appointed by the governor from nominations made to him by the following organizations: to represent beef producers, by the North Dakota stockmen's association; to represent cattle feeders, by the North Dakota cattle feeders ~~association~~ council; to represent dairy producers, by the North Dakota state milk producers association; to represent public livestock markets, by the North Dakota livestock ~~auction markets~~ marketing association ~~and the board of governors at the West Fargo stockyards.~~

Not less than two nominations must be submitted for each office to be filled. ~~Provided, however, that nominations for the representative of the public livestock markets must be made, one each, by the board of governors of the West Fargo stockyards and by the North Dakota livestock auction markets association.~~ Upon the expiration of the initial appointments, only those organizations which have the authorization to nominate candidates representing the specific classification for which an opening or openings exist are eligible to submit nominations. The initial appointments must be made immediately after the effective date of this chapter.

**SECTION 5.** A new subsection to section 4-34-05 of the North Dakota Century Code is created and enacted as follows:

The commission may appoint up to two nonvoting ex officio members for a term of one year that may be extended on an annual basis and the commission shall adopt policies to further define ex officio member eligibility and term limitations.

**SECTION 6. AMENDMENT.** Section 4-34-11 of the North Dakota Century Code is amended and reenacted as follows:

**4-34-11. Refund of assessments.** Any person who has made payment of assessments under this chapter or who has had payment of assessments made on that person's behalf may request and receive a refund, unless prohibited by federal law, and provided that a written request and application for the refund is made within sixty days from the date the assessments were due. Applications for refunds must be made by the seller himself in such form as is reasonably required by the commission, and shall provide the commission with sufficient information to identify assessments.

Approved March 10, 1995  
Filed March 10, 1995



## CHAPTER 72

### HOUSE BILL NO. 1104

(Representatives Nicholas, Kerzman)

(Senators Kelsh, Freborg, Tomac)

(At the request of the Commissioner of Agriculture)

## PESTICIDE AND CONTAINER DISPOSAL PROGRAM

AN ACT to provide for an agricultural pesticide and pesticide container disposal program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.**

1. The definitions contained in section 4-35-05 apply to this section.
2. In consultation with an advisory board consisting of the state health officer, state engineer, state geologist, director of the North Dakota state university extension service, administrative officer of the state soil conservation committee, two individuals representing agribusiness organizations, two individuals representing farm organizations, and one member of the legislative assembly, all of whom must be selected by the commissioner of agriculture, the commissioner of agriculture shall design and implement a project to:
  - a. Collect and either recycle or dispose of unusable pesticides and empty pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the containers and pesticides. The commissioner may limit the type and quantity of containers and pesticides acceptable for collection.
  - b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
  - c. Evaluate recycling options and investigate markets and business opportunities to encourage recycling of containers for resource recovery.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of this project, the member of the legislative assembly who is a member of the advisory board is entitled to compensation and expense reimbursement in the amounts provided for in section 54-35-10 and the other members selected by the commissioner of agriculture are entitled

to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

**SECTION 2. Project scope and evaluation - Proposed legislation.** The project described in section 1 of this Act must occur in areas to be determined by the commissioner of agriculture in consultation with the advisory board under subsection 2 of section 1 of this Act. Before December 1, 1996, the commissioner of agriculture shall determine whether the project implemented under section 1 of this Act should be continued. If the commissioner determines that the project should be continued or expanded, the commissioner shall introduce appropriate legislation in the fifty-fifth legislative assembly.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 1997, and after that date is ineffective.

Approved March 10, 1995  
Filed March 10, 1995

# ALCOHOLIC BEVERAGES

## CHAPTER 73

### HOUSE BILL NO. 1143

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

### BEER ALCOHOL CONTENT

AN ACT to amend and reenact subsection 3 of section 5-01-01 of the North Dakota Century Code, relating to the alcohol content of beer for purposes of the regulation of alcohol.

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

<sup>26</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 5-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Beer" means any malt beverage containing ~~more than~~ one-half of one percent or more of alcohol by volume.

Approved March 1, 1995  
Filed March 2, 1995

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<sup>26</sup> Section 5-01-01 was also amended by section 1 of Senate Bill No. 2198, chapter 74; section 2 of Senate Bill No. 2344, chapter 55; and section 2 of Senate Bill No. 2243, chapter 103.

**CHAPTER 74****SENATE BILL NO. 2198**

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

**MICROBREW PUB LICENSES**

AN ACT to amend and reenact subsection 7 of section 5-01-01, sections 5-01-11, 5-01-14, and subsection 2 of section 5-03-04 of the North Dakota Century Code, relating to microbrew pubs; and to repeal section 5-03-03 of the North Dakota Century Code, relating to bonding of beer or liquor wholesalers.

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

**27 SECTION 1. AMENDMENT.** Subsection 7 of section 5-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. "Microbrew pub" means a brewer that brews ~~twenty-five~~ ten thousand or fewer barrels of beer per ~~week~~ year and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.

**SECTION 2. AMENDMENT.** Section 5-01-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**5-01-11. Unfair competition - Penalty.** A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. A retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state treasurer may determine by regulation the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and equipment for dispensing of tap beer if the expense does not exceed fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed one hundred dollars exclusive of costs of erection and repair.
4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation

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<sup>27</sup> Section 5-01-01 was also amended by section 1 of House Bill No. 1143, chapter 73; section 2 of Senate Bill No. 2344, chapter 55; and section 2 of Senate Bill No. 2243, chapter 103.

include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to two hundred fifty dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers. The state treasurer may, to keep current with market conditions, adjust the limitation amount for the point-of-sale items on an annual basis upon consultation with representatives of the alcohol beverage industry.

Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class A misdemeanor. This section does not apply to a microbrew pub is exempt from the provisions of this section to the extent that this section restricts the coownership of a manufacturer's license and a retail license for the purpose of a microbrew pub.

**SECTION 3. AMENDMENT.** Section 5-01-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**5-01-14. Microbrew pubs - Licensing - Taxes.** A microbrew pub shall obtain a brewer license and a retailer license as required under this title. A microbrew pub may manufacture on the licensed premises, store, transport, sell to wholesale malt beverage licensees, and export no more than ten thousand barrels of malt beverages annually; sell malt beverages manufactured on the licensed premises; and sell alcoholic beverages regardless of source to consumers for consumption on the microbrew pub's licensed premises. A microbrew pub may not engage in any wholesaling activities. All sales and delivery of malt beverages to any other retail licensed premises may be made only through a wholesale malt beverage licensee. Beer manufactured on the licensed premises and sold by a microbrew pub is liable for directly to the consumer for consumption on or off the premises is subject to the taxes imposed pursuant to section 5-03-07, in addition to any other taxes imposed on brewers and retailers. A microbrew pub is not precluded from retailing beer it purchases from a wholesaler. Complimentary samples of beer may not be in an amount exceeding sixteen ounces per patron. Licenses under this section entitle the microbrew pub to sell beer manufactured on the premises for offpremise consumption, in brewery-sealed containers of not less than one-half gallon and not more than three gallons. This section may not be superseded under chapters 11-09.1 and 40-05.1.

**SECTION 4. AMENDMENT.** Subsection 2 of section 5-03-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Liquor wholesalers shall make the payments based on the total gallonage sold the preceding calendar month. Beer wholesalers shall make the payments based on the total gallonage purchased from brewers the preceding calendar month. Microbrew pubs shall make payments based on the total gallonage sold on premises during the preceding calendar month.

**SECTION 5. REPEAL.** Section 5-03-03 of the North Dakota Century Code is repealed.

Approved April 12, 1995

Filed April 13, 1995

## CHAPTER 75

### SENATE BILL NO. 2197

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

## ALCOHOLIC BEVERAGE MANUFACTURING AND LICENSE FEES

AN ACT to amend and reenact sections 5-01-04 and 5-01-08 of the North Dakota Century Code, relating to the manufacture of alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 5-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions.** A person may manufacture malt beverages and wine for personal or family use, and not for sale, without securing a license if the amount manufactured is within quantities allowed by the bureau of alcohol, tobacco and firearms of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the United States treasury department, is guilty of a class A misdemeanor and property used for same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages or a distillery or other plant for the distilling, manufacturing, or processing of liquor within this state if he the person has secured a license from the state treasurer. Such license must be issued on a calendar-year basis with a fee of five hundred dollars. A first-time license fee may be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state treasurer. A license may not be issued for any period for a fee less than one-half of the annual license fee. Said license shall allow sale to only licensed wholesalers.

**SECTION 2. AMENDMENT.** Section 5-01-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**5-01-08. Persons under twenty-one years of age prohibited from manufacturing, purchasing, consuming, or possessing alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities.** Except as permitted in this section and section 5-02-06, any person under twenty-one years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting to purchase alcoholic beverages, consuming alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal

guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 76

## HOUSE BILL NO. 1474

(Representative Glassheim)

## PUBLIC INTOXICATION

AN ACT to amend and reenact section 5-01-05.1 of the North Dakota Century Code, relating to public intoxication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 5-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-05.1. Public intoxication - Assistance - Medical care.** A peace officer has authority to take any apparently intoxicated person to ~~his~~ the person's home, to a local hospital, to a detoxification center, or, whenever ~~such that~~ person constitutes a danger to ~~himself that person~~ or others, to a jail for purposes of detoxification. A duly licensed physician of ~~such~~ a local hospital or a licensed addiction counselor of a detoxification center has authority to hold ~~such that~~ person for treatment up to seventy-two hours. ~~Such That~~ intoxicated person must not be held in jail because of intoxication more than twenty-four hours. An intoxicated person ~~must~~ may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing ~~such that~~ person in a hospital, detoxification center, or jail, ~~said~~ the peace officer shall notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city or county on account of an intoxicated person shall be recoverable from ~~such that~~ person.

Approved March 27, 1995

Filed March 28, 1995



**CHAPTER 77****HOUSE BILL NO. 1144**

(Finance and Taxation Committee)  
(At the request of the State Treasurer)

**ALCOHOLIC BEVERAGE TAX METRIC EQUIVALENTS**

AN ACT to amend and reenact section 5-03-07 of the North Dakota Century Code, relating to metric equivalents for wholesale alcoholic beverage taxes.

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

**SECTION 1. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic beverage wholesalers for the privilege of doing business in this state. The amount of such tax shall be determined by the gallonage sold by wholesalers according to the following schedule:

Beer in bulk containers - per wine gallon	\$ .08 <u>(.021 per liter)</u>
Beer in bottles and cans - per wine gallon	.16 <u>(.042 per liter)</u>
Wine containing less than 17% alcohol by volume - per wine gallon	.50 <u>(.132 per liter)</u>
Wine containing 17%-24% alcohol by volume - per wine gallon	.60 <u>(.159 per liter)</u>
Sparkling wine - per wine gallon	1.00 <u>(.264 per liter)</u>
Distilled spirits - per wine gallon	2.50 <u>(.66 per liter)</u>
Alcohol - per wine gallon	4.05 <u>(1.07 per liter)</u>

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 78

### HOUSE BILL NO. 1233

(Representatives Keiser, Berg, Hausauer)

### BEER BRAND EXTENSIONS

AN ACT to create and enact two new subsections to section 5-04-01 and a new section to chapter 5-04 of the North Dakota Century Code, relating to definitions applicable to beer wholesalers and brewers brand extensions.

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

**SECTION 1.** Two new subsections to section 5-04-01 of the 1993 Supplement to the North Dakota Century Code are created and enacted as follows:

"Brand" means any word, name, group of letters, symbol, or combination thereof, that is adopted and used by a brewer or importer to identify a specific beer product, and to distinguish that beer product from another beer product.

"Brand extension" is any brand that incorporates all or a substantial part of the unique features of a preexisting brand of the same brewer or importer, and which relies to a significant extent on the goodwill associated with that preexisting brand.

**SECTION 2.** A new section to chapter 5-04 of the North Dakota Century Code is created and enacted as follows:

**Same brands - Assignment of brand extensions.** Different categories of products manufactured and marketed under a common identifying trade name are the same brand. For example, "old faithful" includes "old faithful", "old faithful light", "old faithful draft", "old faithful dry", and other products identified principally by the old faithful name. Differences in packaging do not establish different brands. A brewer or importer may assign a brand extension only to the wholesaler with an exclusive sales territory to the brand that is the basis for the brand extension. This limitation does not apply to assignments of brand extensions to wholesalers which were made by a brewer or importer before the effective date of this Act. If, before the effective date of this Act, a brewer or importer assigned a brand extension to a wholesaler that is without exclusive sales territory to the brand that is the basis of the brand extension, any additional brand extension must be assigned to the wholesaler who first had the brand.

Approved March 14, 1995

Filed March 14, 1995

# BANKS AND BANKING

## CHAPTER 79

### HOUSE BILL NO. 1441

(Representatives Keiser, Clayburgh, Coats)

(Senators Mutch, Nething, Tallackson)

## INTERSTATE BANKING AND BRANCHING

AN ACT to create and enact two new sections to chapter 6-03, a new section to chapter 6-08, three new sections to chapter 6-08.3, and chapter 6-08.4 of the North Dakota Century Code, relating to bank powers and interstate banking and branching; to amend and reenact sections 6-01-02, 6-01-09, 6-01-17, 6-01-17.1, 6-01-17.2, 6-01-18, subsection 8 of section 6-03-02, sections 6-03-13.1, 6-03-13.4, 6-07-04.2, 6-08.3-01, 6-08.3-04, 6-08.3-13, 6-10-03, 57-35-02.1, and 57-35.2-02.2 of the North Dakota Century Code, relating to interstate banking and branching and taxation of financial institutions; to repeal sections 6-03-14, 6-03-14.1, 6-03-15, 6-03-16, 6-03-17, 6-03-18, 6-03-19, 6-08.3-02, 6-08.3-03, 6-08.3-05, 6-08.3-06, 6-08.3-10, 6-08.3-11, 6-08.3-12, and 6-08.3-14 of the North Dakota Century Code, relating to banking; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 6-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-02. Definitions.** As used in this title, unless the context or subject matter otherwise requires:

1. "Association", "banking association", or "state banking association" means any corporation organized under the laws of this state covering state banking associations, and all corporations, limited liability companies, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, except national banks, trust companies, and the Bank of North Dakota.
2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, or savings bank, whether organized under the laws of this state or of the United States, engaged in the business of banking.
3. "Bank holding company" means bank holding company as defined in 12 U.S.C. 1841(a)(1).
4. "Banking" means the business of receiving deposits, making loans, discounting commercial paper, issuing drafts, traveler's checks, and similar instruments, handling and making collections, cashing checks and drafts, and buying and selling exchange.

- 4- 5. "Banking department" means the state department of banking and financial institutions.
- 5- 6. "Banking institution" means any bank, trust company, or bank and trust company organized under the laws of this state.
7. "Branch" means a place of business where deposits are received, checks paid, or money lent as a result of a bank that was merged into another bank pursuant to an interstate merger.
- 6- 8. "Commissioner " means the commissioner of banking and financial institutions.
- 6-1- 9. "Corporate central credit union" means a credit union operated for the primary purpose of serving corporate accounts. A credit union is deemed to be a corporate central credit union when its total dollar amount of outstanding corporate loans plus corporate share and deposit holdings is equal to or greater than seventy-five percent of its outstanding loans plus share and deposit holdings.
- 7- 10. "Credit union" means a cooperative, nonprofit association organized for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to improve their economic and social condition.
- 7-1- 11. "Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.
12. "Merger" or "merge" means the merging or consolidation of two or more banks including the purchase of all or substantially all of the assets and assumption of liabilities of a bank, facility, or branch.
- 8- 13. "Mutual investment corporation" or "mutual savings corporation" means a corporation organized to engage in the investment or savings business, but having no capital stock or a nominal capital stock.
- 8-1- 14. "National bank" or "national banking association" means an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].
- 9- 15. "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

**SECTION 2. AMENDMENT.** Section 6-01-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-09.** Supervision and examination by commissioner of banking and financial institutions. The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and institutions placed, out-of-state branches of financial corporations and institutions, and branches of out-of-state state-chartered banks, savings and loan associations, or savings banks within the jurisdiction of the board. Either the commissioner or one or more examiners shall visit each of the state banking associations and other corporations ~~and~~ associations

placed, and branches under the commissioner's jurisdiction at least once each thirty months to examine their affairs and ascertain their financial condition. The commissioner shall inspect and verify the assets and liabilities of the institution and branches to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions, and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether ~~such~~ the methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing ~~such~~ those corporations and institutions, and for ~~such~~ that purpose the commissioner may examine the officers, agents, and employees of ~~such~~ the corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner shall report the condition of ~~such~~ the corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as; ~~in its discretion~~; the exigencies may demand.

**SECTION 3. AMENDMENT.** Section 6-01-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-17. Yearly assessment of banks and interstate branches.** Every state banking association and banking institution placed under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by ~~the provisions of~~ this title, including the Bank of North Dakota; and every branch of an out-of-state state bank, shall pay a yearly assessment. This assessment is to be determined by the state banking board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered banks and branches of out-of-state state banks including the authority to enter into cooperative fee sharing agreements and assessment of associated travel costs with other state bank supervisors. Assessment fees may not be computed on the combined assets of the bank and its trust department for those banks and branches exercising trust powers. Fees for the examination of the trust department must be computed in accordance with section 6-05-28. The assessment must be paid to the state treasurer within thirty days of each June thirtieth. Institutions and branches that have not been examined by the commissioner or the state banking board for three years prior to any assessment date shall not be required to pay the assessment. The state treasurer shall report such payments of fees to the commissioner, and if any such corporation or institution ~~shall be~~ or branch is delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation ~~or~~, institution, or branch until payment of the amount due. The commissioner may assess a penalty of five dollars for each day that the assessment fee is delinquent. All fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

<sup>28</sup> SECTION 4. AMENDMENT. Section 6-01-17.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-17.1. Application fees - Cost of transcript.** The following fees must accompany an application presented to the state banking board, state credit union board, or commissioner and must be paid by the commissioner into the financial institutions regulatory fund:

1. For a certificate of authority to organize a banking association, a fee of five thousand dollars, paid by the applicants.
2. A banking association's application for authority to remove its business to some place within the state other than the town in which it is presently located and to change its name, a fee of two thousand five hundred dollars.
3. National bank conversion to a state bank, a fee of two thousand five hundred dollars.
4. Application by two or more banks to merge or consolidate, a fee of one thousand five hundred dollars ~~for each merging bank.~~
5. Application by a person to sell, dispose, or purchase an association, banking institution, or holding company, a fee of five hundred dollars unless a hearing is held before the board in which case the fee is two thousand dollars.
6. A banking association's application to establish and operate a separate facility ~~for drive-in and walkup service~~, a fee of one thousand five hundred dollars.
7. ~~A banking association's application to establish and operate a paying and receiving station; a fee of one thousand five hundred dollars.~~
- ~~8.~~ A banking association's application to establish customer electronic funds transfer centers, a fee not to exceed five hundred dollars.
- ~~9.~~ 8. For a certificate of authority to organize an annuity, safe deposit, surety or trust company, a fee of five thousand dollars.
- ~~10.~~ 9. A banking association's application for authority to exercise trust powers, a fee of one thousand five hundred dollars.
- ~~11.~~ 10. Application to organize a credit union, a fee of three hundred dollars, paid by the applicants.
- ~~12.~~ 11. Application for a credit union to establish a branch, a fee of three hundred dollars.

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<sup>28</sup> Section 6-01-17.1 was also amended by section 1 of House Bill No. 1236, chapter 80.

- ~~13~~ 12. Application by a credit union to expand its field of membership, a fee of one hundred fifty dollars.
- ~~14~~ 13. Application by a federal credit union to convert to a state credit union, a fee of three hundred dollars.
- ~~15~~ 14. For a certificate of authority to organize a savings and loan association, a fee of five thousand dollars.
- ~~16~~ 15. A savings and loan association's application to establish and operate a branch office, a fee of one thousand five hundred dollars.

The commissioner may cause a certified transcript to be prepared for any hearing conducted on an application. The costs for the original and up to six copies of the transcript must be paid by the applicant.

**SECTION 5. AMENDMENT.** Section 6-01-17.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-17.2. Additional assessment of banks and interstate branches.** Where the commissioner determines that more than one visit, inspection, or examination is necessary to promote the safety and soundness of a state banking association or a branch of an out-of-state state bank during a twelve-month period, ~~such the~~ state banking association or branch shall pay to the state treasurer a fee for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with each additional visit, inspection, or examination and report of examination and for time used by each deputy examiner, or other person ~~or persons~~ in making and otherwise preparing and typing the reports of examination herein provided for. Fees for ~~such the~~ visit, inspection, or examination must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visit, inspection, or examination provided for by this section. A state banking association or branch of an out-of-state state bank shall pay such assessment or fee within ten days of receiving a billing from the commissioner. Fees must be deposited in the financial institutions regulatory fund. The state treasurer shall report ~~such the~~ payments of fees to the commissioner, and if any ~~such~~ corporation or institution or branch is delinquent more than twenty days in making ~~such the~~ payment, the board may make an order suspending the functions of ~~such the~~ delinquent corporation or institution or branch until payment of the amount due. The commissioner may assess a penalty of five dollars a day additional for the delay. The state banking board may waive or postpone the collection of this special assessment if ~~such the~~ assessment would place an undue burden on the state banking association or branch.

**SECTION 6. AMENDMENT.** Section 6-01-18 of the North Dakota Century Code is amended and reenacted as follows:

**6-01-18. Reports and examinations of institutions by federal deposit insurance corporation, other state supervisors, or federal reserve system.** The commissioner; ~~in the commissioner's discretion~~, may accept, in lieu of any examination authorized or required by this title to be conducted by the department of any banking institution, the examination that may have been made of ~~such the~~ institution within a reasonable period by the federal deposit insurance corporation, any other state supervisor, or the federal reserve system, if a copy of ~~such the~~ examination is furnished to the commissioner. The commissioner; ~~in the commissioner's discretion~~, also may accept any report relative to the condition of any banking institution which

may have been obtained by ~~said~~ that corporation or system within a reasonable period in lieu of any similar report ~~which~~ that the commissioner is authorized by this title to require of ~~such~~ the institution, if a copy of ~~such~~ the report is furnished to the commissioner. The commissioner may furnish to ~~said~~ the corporation or system, or to any official or examiner ~~thereof~~, a copy or copies of any or all examinations made of any banking institutions and of any or all reports made by them, and may give access to and disclose to ~~said~~ the corporation or system, or any official or examiner ~~thereof~~, any and all information possessed by the office of the commissioner with reference to the conditions or affairs of any ~~such~~ the institution insured with the federal deposit insurance corporation. ~~Nothing in this~~ This section ~~may be construed to~~ does not limit the duty of any banking institution in this state, the deposits of which are to any extent insured under the provisions of the federal act creating the federal deposit insurance corporation, or of any amendment of or substitution for ~~the same~~ that act, to comply with the provisions of ~~said~~ that act, its amendments or substitutions, or the requirements of ~~said~~ the corporation relative to examinations and reports, nor ~~to~~ limit the powers of the commissioner with reference to examinations and reports under this title.

<sup>29</sup> SECTION 7. AMENDMENT. Subsection 8 of section 6-03-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. To exercise, by its board of directors or duly authorized officers or agents subject to law, all such incidental powers as are necessary to carry on the business of banking, including: discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; and loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of retirement fund contracts or pension programs, and such custodial accounts are exempt from the provisions of chapter 6-05; providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide such services within this state. A bank which provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized ~~paying and receiving station or~~ facility approved by the state banking board, must make such equipment and service available for use by customers of any other bank upon the request of such other bank to share its use and the agreement of such other bank to share pro rata all costs incurred in connection with its installation and operation, and such electronic operations are not deemed to be the establishment of a branch, ~~nor of a paying and receiving station~~, nor of a separate facility. Such electronic operations at premises separate from its banking house or duly authorized ~~paying and receiving station or~~ facility, must be considered a customer electronic funds transfer center and may be established subject to rules ~~and regulations~~ that the state banking board shall adopt.

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<sup>29</sup> Section 6-03-02 was also amended by section 1 of House Bill No. 1271, chapter 83, and section 1 of Senate Bill No. 2342, chapter 82.



**SECTION 8.** A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

Subsidiary depository institutions as agents. Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and any other obligations as an agent for a depository institution affiliate, subject to any requirements established by the board by rule. Notwithstanding any other law, a bank acting as an agent under this section may not be considered to be a branch of the affiliate. However, a depository institution may not conduct any activity as an agent that it is prohibited from conducting as a principal under any federal or state law.

**SECTION 9. AMENDMENT.** Section 6-03-13.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-13.1. Separate facilities authorized.** Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02 and under the supervision of the state banking board, and any national bank doing business in this state, may maintain and operate separate and apart from its banking house facilities ~~for drive-in and walkup services~~, in addition to such service at its main banking house, ~~and at its paying and receiving stations, if any. A separate facility must be within the corporate city limits of the main banking house or within three miles (4.83 kilometers) of such city but may not be within the corporate limits of another city.~~ Any activity incidental to the business of banking may be transacted at a separate facility including receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, renting safe deposit boxes, exercising fiduciary powers if authorized by the board, and receiving payments payable at the bank. Whenever any banking institution that has been granted approval to establish and maintain a facility deems it advisable to discontinue the maintenance of the facility, the banking institution may apply to the state banking board for cancellation and the board may order the cancellation approval within the time the board specifies. The banking institution shall publish notice of the application as required by the board by rule.

**SECTION 10. AMENDMENT.** Section 6-03-13.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-13.4. Effect of authority.** ~~Nothing in sections 6-03-13.1 and 6-03-13.3 authorizes the maintenance or operation of a branch bank; but a facility authorized under those sections may be supplementary or in addition to paying and receiving stations permitted under section 6-03-14. Every paying and receiving station, banking house or office, or drive-in and walkup facility existing on August 1, 1996, must be considered a separate facility approved by the state banking board or the comptroller of the currency, as the case may be, under this chapter. A facility approved under this section may continue to provide from the facility those services or functions as were permitted to be provided before August 1, 1996. National banking associations located in this state have the same, but no greater right by virtue of sections 6-03-13.1 and 6-03-13.3 as banks organized under the laws of this state.~~

**SECTION 11.** A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

Branch conversions. Notwithstanding section 6-03-13.1, any bank organized under chapter 6-02, any national bank doing business in this state, or a bank established in this state by a bank holding company doing business in this state as of

January 1, 1995, may convert a branch of a federal savings and loan association located in this state which was in existence as of March 1, 1995, purchased by the bank between January 1, 1995, and August 1, 1996, into a facility of the bank to be maintained at the same branch location if the acquisition and conversion does not violate the deposit limitations provisions contained in sections 13 and 17 of this Act and the acquisition and conversion of the branch is approved by the appropriate regulatory agencies.

**SECTION 12. AMENDMENT.** Section 6-07-04.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-07-04.2. Acquisition of an institution.** The receiver of an insolvent institution or the state banking board, when it has acquired possession of the institution for the purpose of acquisition pursuant to section 6-07-10, may permit the acquisition of the financial institution. The state banking board may grant approval under this chapter for applications for the organization of a state bank; establishment of a paying and receiving station; or establishment of a drive-in facility facilities. The receiver of an insolvent institution or board, when acting under the provisions of this section, may reject any and all bids.

The procedures may be modified by the state banking board to the extent the board deems necessary under the circumstances. No notice of application need be given and no public hearing need be held. ~~Notwithstanding sections 6-03-14 and 6-03-18, a paying and receiving station may be authorized. A paying and receiving station established by acquisition under this section shall not be required to discontinue operation by commencement of business by a banking institution at the same place.~~

**SECTION 13.** A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Limitation on control of deposits. No financial institution or financial institution holding company may acquire direct or indirect ownership or control of more than twenty-five percent of North Dakota deposits through the direct or indirect acquisition of an interest in, ownership of, or control over another financial institution in this state. No financial institution or financial institution holding company may purchase the assets and assume the liabilities of a banking house or facility of any financial institution located in this state if the consummation of the acquisition results in the acquiring financial institution or financial institution holding company having direct or indirect interest in, ownership of, or control over more than twenty-five percent of North Dakota deposits. No financial institution may establish a facility outside the corporate city limits of the location of the main banking house or any authorized facility if the financial institution or its financial institution holding company has a direct or indirect interest in, ownership of, or control over more than twenty-five percent of North Dakota deposits. For purposes of this chapter, "North Dakota deposits" means North Dakota deposits as that term is defined in section 6-08.3-01.

**SECTION 14. AMENDMENT.** Section 6-08.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08.3-01. Definitions.** In this chapter, unless the context otherwise requires:

1. **"Bank"** means a bank, as that term is defined in section 6-01-02, which:

a. Has federal deposit insurance corporation insurance of deposits;

- b. Accepts deposits that the depositor has a legal right to withdraw on demand; and
  - c. Engages in the business of making commercial loans: "Adequately capitalized" means a level of capitalization that meets or exceeds all applicable federal regulatory capital standards.
2. "Bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956, as amended [ch. 240, 70 Stat. 133, 12 U.S.C. 1841].
3. "Board" means the state banking board.
4. 3. "Commissioner" means the commissioner of banking and financial institutions.
5. "Control" means, with respect to a bank or bank holding company:
- a. Ownership; control; or power to vote, directly or indirectly, or acting through one or more other persons; twenty-five percent or more of any class of voting securities;
  - b. Control in any manner over the election of a majority of the directors; or
  - c. Power to exercise, directly or indirectly, a controlling influence over management and policies.
6. "Equity capital" means the sum of common stock, preferred stock, and surplus and undivided profits.
7. "Located in this state" means:
- a. A bank of which the organizational certificate identifies an address in this state as the principal place of conducting the business of banking; or
  - b. A bank holding company, with banking subsidiaries; the majority of deposits of which are in this state.
8. "Reciprocating state" is a state that authorizes the acquisition, directly or indirectly, or control of banks in that state by a bank or bank holding company located in this state under conditions similar to those imposed by the laws of this state as determined by the board.
9. "Reciprocating state bank holding company" means a bank holding company that conducts its operations principally in a reciprocating state; the reciprocating state is the state in which the operations of the company's banking subsidiaries are the largest in terms of total deposits; and the company is not owned or controlled by a company having its principal place of business in other than a reciprocating state.
4. "Default" means default as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

5. "Depository institution" means depository institution as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].
6. "Depository institution holding company" means depository institution holding company as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].
7. "Deposit" means deposit as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].
8. "Federal reserve" means the board of governors of the federal reserve system or any successor thereto.
9. "In danger of default" means in danger of default as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].
10. "North Dakota deposits" means all deposits held at branches or offices located in this state of all depository institutions, based upon the public reports most recently filed with the appropriate regulatory agency.

SECTION 15. A new section to chapter 6-08.3 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Application to acquire a state-chartered bank. An out-of-state bank holding company may acquire a North Dakota state-chartered bank pursuant to the approval process applicable for in-state acquisitions and under the conditions of this chapter. An out-of-state bank holding company shall provide notice to the board at the time an application is filed with the applicable federal regulatory agency to acquire a North Dakota bank.

SECTION 16. A new section to chapter 6-08.3 of the 1993 Supplement of the North Dakota Century Code is created and enacted as follows:

Reporting requirements. An out-of-state bank holding company that filed an application under chapter 6-08.3 which was approved by the board before September 29, 1995, shall comply with the reporting requirements of section 6-08.3-09 for a period of five years from the date that the application was approved or longer if extended by the board due to noncompliance with the requirements of chapter 6-08.3 or order of the board approving the application.

SECTION 17. A new section to chapter 6-08.3 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Deposit limitation.

1. A depository institution or depository institution holding company may not consolidate or merge with, or acquire a North Dakota depository institution or a depository institution holding company that controls a North Dakota depository institution if the federal reserve, comptroller of the currency, federal deposit insurance corporation, or office of thrift supervision, as the case may be, determines that the depository institution or a depository institution holding company will control more than twenty-five percent of North Dakota deposits.
2. The federal reserve, comptroller of the currency, or federal deposit insurance corporation, as the case may be, may approve an acquisition

or merger under this title without regard to the limitations of this section, if the transaction involves an acquisition or merger:

- a. Of one or more depository institutions in default or in danger of default; or
- b. With respect to which assistance is provided under section 13(c) of the Federal Deposit Insurance Act [12 U.S.C. 1823(c)].

**SECTION 18. AMENDMENT.** Section 6-08.3-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08.3-04. New bank application.** Any application to organize a state-chartered bank under this title may include control by a reciprocating state bank an out-of-state bank holding company if, in addition to the conditions in chapter 6-02 ~~and~~, the application does not present any facts that would be grounds for disapproval ~~in section 6-08.3-03.~~

**SECTION 19. AMENDMENT.** Section 6-08.3-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08.3-13. Interstate banking authorization.** This chapter specifically authorizes, in accordance with section 3 of the Bank Holding Company Act of 1956, [12 U.S.C. 1842] and section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 [Pub. L. 103-328; 108 Stat. 2338], reciprocal interstate banking in this state. ~~Except as authorized under this title, this chapter does not authorize the establishment in this state of branch offices of a banking subsidiary of any out-of-state bank holding company making an acquisition under this chapter.~~

**SECTION 20.** Chapter 6-08.4 of the North Dakota Century Code is created and enacted as follows:

**6-08.4-01. Definitions.** For the purposes of this chapter, unless the context otherwise requires:

1. "Bank" means insured bank as defined in 12 U.S.C. 1813(h), but the term does not include "foreign bank" as defined in 12 U.S.C. 3101(7), except any foreign bank organized under the laws of a territory of the United States, the deposits of which are insured by the federal deposit insurance corporation.
2. "Home state" means:
  - a. With respect to a national bank, the state in which the main office is located; and
  - b. With respect to a state bank, the state by which the bank is chartered.

**6-08.4-02. Interstate mergers.** Effective May 31, 1997, the responsible federal regulatory authority may approve a merger transaction under the Federal Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 87; 12 U.S.C. 1811 et seq.] between a North Dakota bank and an out-of-state bank.

6-08.4-03. Authority of state banks to establish interstate branches by merger. Notwithstanding section 6-08.4-02, effective May 31, 1997, a North Dakota state-chartered bank, with approval of the board, may establish, maintain and operate one or more branches in a state other than this state pursuant to an interstate merger in which the North Dakota state-chartered bank is the resulting bank. An application must be filed with the board at the time an application is filed with the responsible federal regulatory authority. The North Dakota state-chartered bank must also comply with section 6-03-11. The board may approve the interstate merger if the board finds that:

1. The proposed interstate merger will not be detrimental to the safety and soundness of the resulting North Dakota state-chartered bank;
2. Any new officers and directors are qualified, and possess experience and financial responsibility to direct and manage the resulting North Dakota state-chartered bank; and
3. The proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this state and is otherwise in the public interest.

6-08.4-04. Interstate merger transactions and branching permitted. Effective May 31, 1997, one or more North Dakota banks may merge with one or more out-of-state banks under this chapter, and an out-of-state bank resulting from an interstate merger may maintain and operate branches of a merged North Dakota bank in this state if the conditions and filing requirements of this title are met.

6-08.4-05. Notice and filing requirements. Any out-of-state bank that will be the resulting bank pursuant to an interstate merger involving a North Dakota bank must notify and submit a copy of its interstate merger application to the board of the proposed merger not later than the date on which it files the application with the responsible federal regulatory authority.

6-08.4-06. Powers.

1. An out-of-state state-chartered bank that establishes and maintains one or more branches in this state under this chapter may conduct any activities at the branch or branches that are authorized under the laws for North Dakota state banks, except to the extent those activities may be prohibited by the laws, rules, or orders of the home state applicable to the out-of-state state-chartered bank.
2. A North Dakota state-chartered bank may conduct any activities at any branch outside this state which are permissible for an out-of-state state-chartered bank where the branch is located, except to the extent those activities are expressly prohibited by North Dakota law, rule, or order.

6-08.4-07. Enforcement. If the board or commissioner determines that a branch maintained by an out-of-state state-chartered bank is being operated in violation of any provision of North Dakota law, or that the branch is being operated in an unsafe and unsound manner, the board or commissioner has the same authority to take all enforcement actions as if the branch were a North Dakota state-chartered bank.

**SECTION 21. AMENDMENT.** Section 6-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-10-03. Limit on license.** No license may be granted for the purpose of conducting such business in any city wherein there already is operating a state or national bank; or an authorized ~~paying and receiving station~~ separate facility. In the event that a national or state bank or an authorized ~~paying and receiving station~~ separate facility is authorized to do, and does commence doing business in any city where a license has been granted to operate a business under this section, such license may not thereafter be renewed.

**SECTION 22. AMENDMENT.** Section 57-35-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-35-02.1. Imposition of tax after merger ~~or~~, consolidation, or branching.** Any banking institution or national bank that enters a consolidation or merger with one or more ~~other such~~ institutions or banks after June 30, 1987, shall continue to pay taxes due under this chapter after the consolidation or merger in the manner and on the basis taxes would have been paid had the consolidation or merger not occurred. If a bank establishes one or more separate facilities in this state pursuant to sections 6-03-13.1 through 6-03-13.3 and section 11 of this Act after June 30, 1995, the bank shall pay taxes due under this chapter after the establishment of the separate facility or facilities in the manner and on the basis taxes would have been paid if the separate facility or facilities were created by merger or consolidation pursuant to section 6-03-14.1.

**SECTION 23. AMENDMENT.** Section 57-35.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.2-02.2. Payment of taxes after merger ~~or~~, consolidation, or branching.** Any banking institution or national bank that enters a consolidation or merger with one or more ~~other such~~ institutions or banks after June 30, 1987, shall continue to pay taxes due under this chapter after the consolidation or merger in the manner and on the basis taxes would have been paid had the consolidation or merger not occurred. If a bank establishes one or more separate facilities in this state pursuant to sections 6-03-13.1 through 6-03-13.3 and section 11 of this Act after June 30, 1995, the bank shall pay taxes due under this chapter after the establishment of the separate facility or facilities in the manner and on the basis taxes would have been paid if the separate facility or facilities were created by merger or consolidation pursuant to section 6-03-14.1.

**SECTION 24. REPEAL.** Sections 6-03-14, 6-03-14.1, 6-03-15, 6-03-16, and 6-03-18 of the North Dakota Century Code and sections 6-03-17 and 6-03-19 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 25. REPEAL.** Sections 6-08.3-02, 6-08.3-03, 6-08.3-05, 6-08.3-06, 6-08.3-10, 6-08.3-11, 6-08.3-12, and 6-08.3-14 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 26. EFFECTIVE DATE.** Sections 8, 14, 15, 16, 18, 19, and 25 of this Act become effective on September 29, 1995; sections 4, 7, 9, 10, 12, 21, and 24 of this Act become effective on August 1, 1996; section 20 of this Act becomes effective on May 31, 1997; and sections 22 and 23 of this Act become effective for taxable years beginning after December 31, 1995.

Approved April 6, 1995

Filed April 6, 1995



## CHAPTER 80

## HOUSE BILL NO. 1236

(Representative Berg)

(Senator Lips)

## TRUST COMPANY SUBSIDIARIES AND OFFICES

AN ACT to create and enact a new subsection to section 6-01-17.1, two new sections to chapter 6-05, a new section to chapter 57-35, and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to application fees for trust companies, the establishment of multiple offices of a trust company, the engagement in business through operating subsidiaries of a trust company, and the taxation of trust companies; to amend and reenact subsection 2 of section 57-35-01 and subsection 4 of section 57-35.2-01 of the North Dakota Century Code, relating to the taxation of trust companies; and to provide an effective date.

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

<sup>30</sup> SECTION 1. A new subsection to section 6-01-17.1 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

A trust company's application or notification to establish an operating subsidiary or branch office, a fee of five hundred dollars.

SECTION 2. A new section to chapter 6-05 of the North Dakota Century Code is created and enacted as follows:

Multiple offices or places of business - Application to state banking board - Hearing.

1. A trust company may establish and maintain for itself and its operating subsidiary organizations one or more offices or places of business within this state, throughout the United States, in foreign countries, or in dependencies or insular possessions of the United States upon written application to the department of banking and financial institutions for approval from the state banking board. The application must include the information specified by the board.
2. Notice of the application to establish and maintain an office or place of business must be published as required by the state banking board.
3. Within ten business days after receipt of the application by the department of banking and financial institutions, the commissioner shall determine if the application is complete and shall notify the trust company of the determination. If within the ten business days the commissioner determines the application is incomplete, the

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<sup>30</sup> Section 6-01-17.1 was also amended by section 4 of House Bill No. 1441, chapter 79.

commissioner shall request the additional information necessary to complete the application. Within ten days after receipt of the additional information, the commissioner shall notify the trust company by mail of the commissioner's determination of completeness. Within sixty days after the date for the mailing of a notice of completeness by the commissioner, the state banking board either shall approve the application or shall notify the trust company that a hearing on the application will be required.

4. Any hearing required by the state banking board must be commenced and concluded by issuance of the order of the board within ninety days after the date for the mailing of a notice of completeness by the commissioner. If the hearing is not concluded within this ninety-day period, the application is deemed approved by the board.
5. The state banking board may disapprove the application if it finds, after a hearing:
  - a. The establishment and maintenance of the office or place of business will jeopardize the solvency of the trust company; or
  - b. The operation of more than one office or place of business by the trust company will place the company in an unsafe and unsound condition.

**SECTION 3.** A new section to chapter 6-05 of the North Dakota Century Code is created and enacted as follows:

Structure of trust company - Operating subsidiaries - Notice - Hearing - Supervision.

1. A trust company may conduct its business directly or through one or more operating subsidiary organizations, including a limited purpose bank that is established under the laws of a jurisdiction other than this state. The activities of an operating subsidiary of a trust company must be limited to those activities in which the trust company itself could engage.
2. A trust company that desires to establish or acquire an operating subsidiary must submit a written notification to the department of banking and financial institutions not less than thirty days before the trust company's investment in the subsidiary organization is made. The notification must include the information specified by the state banking board.
3. Within ten business days after receipt of the notification by the department, the commissioner shall determine if the notice is complete and shall notify the trust company of the determination. If within the ten business days the commissioner determines that the notice is incomplete, the commissioner shall request the additional information necessary to complete the notice. Within ten days after receipt of the additional information, the commissioner shall notify the trust company by mail of the commissioner's determination of completeness. The commissioner shall inform the state banking board of the receipt of a completed notice. Upon expiration of thirty days from the date for the mailing of a notice of completeness, the trust company's investment in the operating

subsidiary in accordance with its notice is deemed approved by the state banking board, unless within that thirty-day period the state banking board has served the trust company with a notice of hearing on the company's proposed investment.

4. Any hearing required by the state banking board must be commenced and concluded by the issuance of the order of the board within ninety days after the date for the mailing of a notice of completeness by the commissioner. If the hearing is not concluded within the ninety-day period, the investment by the trust company is deemed approved by the state banking board.
5. The state banking board may prohibit the trust company's investment in an operating subsidiary organization if it finds after a hearing:
  - a. The investment will jeopardize the solvency of the trust company; or
  - b. The operation of the trust company through the subsidiary organization will place the trust company in an unsafe and unsound condition.
6. The state banking board has the same authority to examine and supervise an operating subsidiary as exists for the trust company.

**SECTION 4. AMENDMENT.** Subsection 2 of section 57-35-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Trust company" includes any trust company organized under the laws of this state with its principal place of, the United States, another state, a foreign country, or a dependency or insular possession of the United States, and doing business in this state.

**SECTION 5.** A new section to chapter 57-35 of the North Dakota Century Code is created and enacted as follows:

Imposition of tax on interstate trust companies. If the provisions of this chapter do not fairly represent the extent of the trust company's business activity in this state, the tax commissioner may require, with respect to all or any part of the trust company's business activity, if reasonable, the employment of another method to effectuate an equitable allocation and apportionment of the trust company's income.

**SECTION 6. AMENDMENT.** Subsection 4 of section 57-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Trust company" means any trust company organized under the laws of this state, any other state, or of the United States, with a place of a foreign country, or a dependency or insular possession of the United States, and doing business in this state.

**SECTION 7.** A new section to chapter 57-35.2 of the North Dakota Century Code is created and enacted as follows:

Imposition of tax on interstate trust companies. If the provisions of this chapter do not fairly represent the extent of the trust company's business activity in this state, the tax commissioner may require, with respect to all or any part of the

trust company's business activity, if reasonable, the employment of another method to effectuate an equitable allocation and apportionment of the trust company's income.

**SECTION 8. EFFECTIVE DATE.** Sections 4, 5, 6, and 7 of this Act are effective for taxable years beginning after December 31, 1994.

Approved March 29, 1995

Filed March 29, 1995

**CHAPTER 81****SENATE BILL NO. 2364**

(Senators Traynor, Grindberg)  
(Representative Mahoney)

**BANK OFFICER AND DIRECTOR LIABILITY**

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to liability of bank officers and directors; and to provide for retroactive application.

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

**SECTION 1.** A new section to chapter 6-01 of the North Dakota Century Code is created and enacted as follows:

**Liability of bank officers and directors.** No claim or action seeking to recover money damages may be brought by the federal deposit insurance corporation, resolution trust corporation, or other federal banking regulatory agency against any director or officer, including any former director or officer, of any insured financial depository institution unless the claim or action arises out of the gross negligence, or willful or intentional misconduct of the officer or director during the term of office with the insured financial institution.

**SECTION 2. RETROACTIVE APPLICATION OF ACT.** This Act is retroactive in application.

Approved March 2, 1995  
Filed March 3, 1995

**CHAPTER 82****SENATE BILL NO. 2342**

(Senator W. Stenehjem)

**BANK AND TRUST COMPANY INVESTMENTS**

AN ACT to amend and reenact sections 6-03-02 and 6-05.1-03 of the North Dakota Century Code, relating to conflict of interest for banks acting as fiduciaries in investment in securities.

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

<sup>31</sup> **SECTION 1. AMENDMENT.** Section 6-03-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-02. Powers.** After an association has made and filed articles of association and an organization certificate, it becomes a body corporate, and as such, and in the name designated in the certificate, it, subject to section 6-03-01, has the power:

1. ~~Repeated by S.L. 1973, ch. 80, § 21.~~
- 2- To have succession for a period of twenty-five years from its organization, unless it is sooner dissolved according to the provisions of this title, or unless its franchise becomes forfeited by some violation of law.
- 3- 2. To make contracts.
- 4- 3. To sue and be sued.
- 5- 4. To elect or appoint directors, such board to consist of any number of members, not less than three nor more than twenty-five, a majority of whom must be residents of the state of North Dakota, and, by such board of directors, to appoint a president, who must be a member of said board, a cashier, and such other employees as may be required, to define their duties, to require bonds of them and fix the penalty thereof, and to dismiss such officers and employees, or any of them, and appoint others to fill their places.
- 6- 5. To provide, by its board of directors, bylaws not inconsistent with the laws of this state to regulate the manner in which its directors and officers must be elected or appointed. Vacancies in the board of directors, not exceeding one-third of the whole membership thereof in any calendar year, must be filled by a majority vote of the remaining members. The bylaws must provide a method for filling vacancies exceeding that number.

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<sup>31</sup> Section 6-03-02 was also amended by section 1 of House Bill No. 1271, chapter 83, and section 7 of House Bill No. 1441, chapter 79.

- ~~7~~ 6. To provide, by its board of directors, bylaws not inconsistent with the laws of this state to regulate the manner in which its stock and property must be transferred, its business conducted, and the privileges granted to it by law exercised and enjoyed.
- ~~8~~ 7. To exercise, by its board of directors or duly authorized officers or agents subject to law, all such incidental powers as are necessary to carry on the business of banking, including: discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; and loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of retirement fund contracts or pension programs, and such custodial accounts are exempt from the provisions of chapter 6-05; providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide such services within this state. A bank which provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized paying and receiving station or facility approved by the state banking board, must make such equipment and service available for use by customers of any other bank upon the request of such other bank to share its use and the agreement of such other bank to share pro rata all costs incurred in connection with its installation and operation, and such electronic operations are not deemed to be the establishment of a branch, nor of a paying and receiving station, nor of a separate facility. Such electronic operations at premises separate from its banking house or duly authorized paying and receiving station or facility, must be considered a customer electronic funds transfer center and may be established subject to rules and regulations that the state banking board shall adopt.
- ~~9~~ 8. To enter into contracts, incur obligations, and generally to perform all acts necessary or appropriate to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may be or become available or may inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators under the provisions of the federal act creating the federal deposit insurance corporation or under any other act or regulation of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments thereto or substitution therefor, when authorized so to do by its board of directors.
- ~~10~~ 9. To subscribe for and acquire any stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.
- ~~11~~ 10. To take, receive, and hold United States postal savings deposits, and to take any action necessary to procure the deposit of the same.
- ~~12~~ 11. To enter into the business of dealing in securities and stock for the purpose of purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of individual and institutional customers and to provide portfolio investment advisory,

management, information, forecasting, and research services to such customers in combination with or separate from such purchases and sales.

~~11.~~ 12. To exercise fiduciary powers upon application as provided under section 6-05-01 as the board may prescribe by rule.

13. To invest all moneys received by it in a trust, in authorized securities, and be responsible to the owner or a third-party beneficiary for the validity, regularity, quality, value, and genuineness of these investments and securities at the time made and for the safekeeping of these securities and the evidences of the securities. When special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment may be made, a bank shall follow this direction and, in such case, it is not further responsible by reason of the performance of the trust. A bank may retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. For the faithful discharge of its duties and the discharge of its trust, it is entitled to reasonable compensation or an amount as has been or may be agreed upon by the parties and all necessary expenses, with legal interest on those amounts. The trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940 [Pub. L. 76-686; 54 Stat. 789; 15 U.S.C. 80a-1 - 80a-52]. The fact that the banking institution, or an affiliate of the banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services does not preclude the trustee from investing in the securities of that investment company or trust. The banking institution and trust shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation, and the relationship of ownership. No compensation or commission paid or agreed to be paid to it for the negotiation of a loan or the execution of a trust may be deemed interest within the meaning of the law, nor may any excess thereof over the legal rate be deemed usury.

**SECTION 2. AMENDMENT.** Section 6-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-05.1-03. Permissible business of subsidiary trust companies.** The permissible business of a subsidiary trust company is to engage in such trust business as may be engaged in by a trust company pursuant to section 6-05-08. A subsidiary trust company may not exercise any of the powers provided in subsection § 7 of section 6-03-02, nor conduct commercial banking business, but may maintain deposits of funds of fiduciary accounts not currently invested.

Approved April 4, 1995  
Filed April 4, 1995



**CHAPTER 83****HOUSE BILL NO. 1271**

(Representative Keiser)

**ELECTRONIC FUNDS TRANSFER FEES**

AN ACT to amend and reenact subsection 8 of section 6-03-02 of the North Dakota Century Code, relating to fees charged by banks for the use of electronic funds transfer equipment.

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

<sup>32</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 6-03-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. To exercise, by its board of directors or duly authorized officers or agents subject to law, all such incidental powers as are necessary to carry on the business of banking, including: discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; and loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of retirement fund contracts or pension programs, and such custodial accounts are exempt from the provisions of chapter 6-05; providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide such services within this state. A bank which provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized paying and receiving station or facility approved by the state banking board, must make such equipment and service available for use by customers of any other bank upon the request of such other bank to share its use and the agreement of such other bank to share pro rata all costs incurred in connection with its installation and operation, and such electronic operations are not deemed to be the establishment of a branch, nor of a paying and receiving station, nor of a separate facility. Such electronic operations at premises separate from its banking house or duly authorized paying and receiving station or facility, must be considered a customer electronic funds transfer center and may be established subject to rules and regulations that the state banking board shall adopt. A financial institution engaging in electronic funds transfers in this state may impose a transaction fee for the use of an electronic funds transfer facility if the imposition of the fee is disclosed at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the

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<sup>32</sup> Section 6-03-02 was also amended by section 1 of Senate Bill No. 2342, chapter 82, and section 7 of House Bill No. 1441, chapter 79.

transaction fee. The fee may be in addition to any other charge imposed by the operator at an electronic funds transfer facility or by any other financial institution.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 84****HOUSE BILL NO. 1263**

(Representative Keiser)

**BANK REAL ESTATE LOAN LIMITATIONS**

AN ACT to amend and reenact section 6-03-05 of the North Dakota Century Code, relating to real estate mortgages.

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

**SECTION 1. AMENDMENT.** Section 6-03-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-05. Loans on real estate - Regulation - Limitation.** Before any real estate loan in excess of one hundred thousand dollars is made an appraisal must be conducted by a licensed or certified appraiser as required by the Federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.] or, if not so required, by an individual or appraisal committee who is independent of the transaction. The selected appraiser or appraisal committee shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors or its loan committee, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board or its loan committee to determine if the loan shall be granted. Such written report must be made a permanent record in the bank's files and must be made available to the commissioner. ~~No unamortized loan secured by realty may be made for a period exceeding five years and may not exceed fifty percent of the appraised value of the Any real estate offered as security loan made must conform to loan-to-value limits as established by rule by the state banking board under chapter 28-32.~~

~~Any amortized real estate loan may be made in an amount not to exceed ninety percent of the appraised value of the real estate offered as security unless the amount above this limitation is government guaranteed or insured by a private mortgage loan within a period of not more than thirty years.~~

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 85****HOUSE BILL NO. 1175**

(Representative Clayburgh)

**BANK RELOCATION, DIVIDENDS, AND LOANS TO OFFICERS**

AN ACT to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to relocation of a bank facility due to an emergency; and to amend and reenact sections 6-03-36 and 6-03-60 of the North Dakota Century Code, relating to the payment of dividends by a banking institution or association and loans to directors, officers, and employees.

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

**SECTION 1.** A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

Temporary relocation of bank operations. In the event of an emergency, a bank may apply to the commissioner to relocate its main banking house, banking house or office, paying and receiving station, or drive-in and walk-up facility until the former location is repaired to allow bank operations to resume. No notice or public hearing need be held to act upon the temporary relocation request.

**SECTION 2. AMENDMENT.** Section 6-03-36 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-36. Capital must be maintained - Dividends prohibited under certain conditions.**

1. No director or officer of an association may permit the impairment of an association's capital by the payment of dividends or otherwise.
2. Except as provided in subsection 4, no dividend may be paid which exceeds the following amount:
  - a. An association's ~~retained~~ net profits for the period beginning January one of the year for which the proposed dividends are declared and ending as ~~of reported in the date used to determine shareholders of record~~ most recent quarter-end call report; plus
  - b. The association's ~~retained~~ net profits for the preceding two calendar years as reported in the yearend call report; less
  - c. Any required transfers to:
    - (1) Surplus;
    - (2) Funds for the retirement of preferred stock, capital notes, and debentures.
3. For the purpose of this section, "net profits" means the ~~remainder of all earnings from the association's current annual operations plus actual~~

recoveries of past losses on loans, investments, and other assets; after deducting from the total, all current operating expenses; actual losses; accrued dividends on preferred stock; if any, accrued interest on capital notes and debentures; unrealized losses from investment in shares of investment companies registered under the Investment Companies Act of 1940; and all federal and state taxes institution's net profits after taxes prior to extraordinary items less dividends as reported on the call reports.

4. Payment of a dividend which exceeds the calculated amount in subsection 2 may be made only with prior approval of the commissioner or state banking board.

**SECTION 3. AMENDMENT.** Section 6-03-60 of the North Dakota Century Code is amended and reenacted as follows:

6-03-60. Loans to and purchases from directors, executive officers, and employees principal shareholders - Restrictions - Conditions - Penalty - Civil liability. No director or managing officer of any state banking association; nor the commissioner, assistant commissioner, nor deputy examiners, shall be permitted to borrow an amount in excess of twenty-five thousand dollars from any state banking association without first obtaining the approval of a majority of the board of directors of said banking association; excluding from such majority any director whose application is to be acted upon; and no action upon any loan herein provided for shall be taken by the board in the presence of the applicant. Every loan shall be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and shall be in strict conformity with the association's rules and regulations. No executive officer of any state banking association shall borrow from or otherwise become indebted to any state banking association of which he is an executive officer in amounts or in an aggregate amount which exceed those authorized by the state banking board; for any loan or extension of credit, including loans secured by a first mortgage on the officer's residence, or a loan or extension of credit to finance the education of the officer's children. At no time shall may any combination of loans or extensions of credit or both made by a state banking association to an officer of that association exceed the limitation on loans to one person or concern specified in section 6-03-59, federal law, or federal rule. The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless (1) the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation, other than in the capacity of a director, in major policymaking functions of the bank or company; and (2) the officer does not actually participate therein.

No director, officer, or employee of a bank shall sell to such bank, directly or indirectly, any mortgage, bond, note, stock, or other property whatsoever without first obtaining the written approval of the board of directors. The action of the board of directors in connection with the loans and discounts required under this section shall be made a matter of permanent record in the minute books of the banking association. Any shareholder, officer, or director of any banking association who knowingly shall violate the provisions of this section shall be held

liable in his personal and individual capacity for all loss or damage which the association or any person shall sustain in consequence thereof and shall be guilty of a class B misdemeanor. The commissioner may require, at any time, the payment or repurchase of loans, securities, or obligations herein referred to.

Approved March 27, 1995

Filed March 27, 1995

## CHAPTER 86

### HOUSE BILL NO. 1264

(Representative Keiser)

### BANKING ASSOCIATION CALL REPORTS

AN ACT to amend and reenact section 6-03-70 of the North Dakota Century Code, relating to the publication of call reports by state banking associations.

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

**SECTION 1. AMENDMENT.** Section 6-03-70 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-70. Reports - Regular and special - Publication - Penalty.** Every state banking association shall respond to calls each year, the number to be determined by the commissioner. The commissioner shall prescribe the forms for such reports which must be the same forms as those for similar reports called by the federal deposit insurance corporation. The reports must exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on a past day specified by the commissioner, which must be the same day on which similar reports are required by the federal deposit insurance corporation. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the commissioner within thirty days after receipt of the request for the same. ~~Each report, in a form prescribed by the commissioner, must be published within sixty days of the call date, at the expense of the association, in some newspaper in the city where such bank is located, and in case there is no such newspaper, then in a legal newspaper of the county in which such association is located.~~ The commissioner may request an amended call for reports filed in error and may require republication of the call report containing material errors. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the federal deposit insurance corporation or federal reserve bank, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the federal deposit insurance corporation. The commissioner may call for a special report from any association whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the association. Every association which fails to make and transmit any report required by this section shall forfeit and pay to the state treasurer for deposit in the financial institutions regulatory fund a penalty of two hundred dollars for each delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 87****HOUSE BILL NO. 1247**

(Representative Martinson)

**TRUST COMPANIES**

AN ACT to amend and reenact sections 6-05-01, 6-05-04, and 59-04-21 of the North Dakota Century Code, relating to the formation of trust companies, surety deposits of trust companies, and expenses and attorney's fees for a trust estate.

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

**SECTION 1. AMENDMENT.** Section 6-05-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-05-01. Who may form - Corporation has perpetual existence.** Any number of persons, not less than nine, at least three of whom must be residents of this state, may associate themselves and form a corporation for the purpose of transacting business as an annuity, safe deposit, and trust company. Its existence shall be perpetual.

At the time and place stated, and through any sources of information at its command, the board shall examine and consider all relevant factors including whether the place where such company is proposed to be located is in need of a further annuity, safe deposit, and trust company, whether the proposed institution is adapted to the filling of such need, and whether the proposed incorporators are possessed of such character, integrity, reputation, and financial standing as shown by a detailed financial statement to be furnished by them, that their connection with the company will be beneficial to the public welfare of the community in which such company is proposed to be established. The board shall hear any reasons advanced by the applicants why they should be permitted to organize the proposed institution, and any reasons advanced by any person why such institution should not be permitted to be organized. At the termination of such hearing, the board shall make a brief statement in writing of its conclusions, and if it finds that the proposed institution should not be permitted to organize, it shall state briefly the reasons why. A copy of such conclusions either shall be endorsed upon or attached to the organization certificate, together with the refusal or grant of permission to the proposed incorporators to present the said organization certificate to the secretary of state. A determination in favor of such organization must be joined in by at least a majority of the members of the board.

Any banking association organized under chapter 6-02 may apply to the board for an order authorizing the applicant to exercise fiduciary powers. If the determination of the board is in favor of the applicant the board shall make its order authorizing the applicant to engage in the business of a trust company upon its showing full compliance with sections 6-05-03, 6-05-04, and 6-05-05 except the capital stock of the banking association shall not be required to be divided in shares of one hundred dollars each as provided by section 6-05-03. Sections 6-05-06 and 6-05-07 are not applicable to banking associations granted authority to engage in the business of a trust company by the board. Thereafter such banking association must be subject to the jurisdiction of the board as to its trust company operations the same as trust companies organized under chapter 6-05.



Any corporation organized and authorized to transact the business of fidelity insurance and corporate suretyship prior to July 1, 1983, pursuant to the former sections 6-05-08 and 6-05-19 through 6-05-24 and sections 6-05-30 through 6-05-33 may continue to operate under the provisions of those sections as they existed on June 30, 1983.

**SECTION 2. AMENDMENT.** Section 6-05-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-05-04. Surety deposit investments required - Securities in which investment may be made.** Every corporation organized under this chapter and every foreign corporation before engaging in similar comparable activities within this state shall either deposit with any federal reserve bank, the Bank of North Dakota, or any other custodian approved by the commissioner, securities as provided by this section or pledge a certificate of deposit as provided by this section. The deposit or pledge may not be less than fifty thousand dollars or less than one-sixth of the par value of the capital stock of the corporation, whichever is the greater. However, no corporation is required to deposit or pledge more than five hundred thousand dollars. The deposit certificate or pledge agreement must authorize the commissioner to cause such deposit, in part or in whole, to be transferred to the commissioner upon the commissioner's demand. An original of ~~such the deposit~~ certificate of deposit or pledge must be furnished to the commissioner. ~~The securities so deposited~~ deposit or pledge must be:

1. Bonds of the United States or of this state;
2. Bonds of other states which have the approval of the state auditor and the commissioner of banking and financial institutions;
3. Bonds or obligations of any township, school district, city, or county within this state, whose total bonded indebtedness does not exceed five percent of the then assessed valuation thereof;
4. Bonds or promissory notes secured by first mortgages or deeds of trust upon unencumbered real estate situated within the state of North Dakota worth two and one-half times the amount of the obligation so secured;
5. Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the African Development Bank;  
~~or~~
6. United States treasury bills or notes of an agency thereof;
7. Certificates of deposit fully insured by the federal deposit insurance corporation from banks located within this state; or
8. Certificates of deposit issued by the Bank of North Dakota.

**SECTION 3. AMENDMENT.** Section 59-04-21 of the North Dakota Century Code is amended and reenacted as follows:

59-04-21. Expenses and attorney's fees allowed. The trustee ~~shall~~ must be allowed all necessary expenses in the care, management, and settlement of the trust estate. ~~No compensation shall be allowed for attorney's services rendered to such trustee unless the same were performed by or under the direction of an attorney at law who is a resident of and admitted to practice in this state.~~ The trustee may pay attorney's fees and costs reasonably necessary in the performance of the trustee's duties.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 88****HOUSE BILL NO. 1425**

(Representative Clayburgh)

(Senator Grindberg)

**TRUST FUND DEPOSITS**

AN ACT to create and enact a new section to chapter 6-05 of the North Dakota Century Code, relating to deposit of trust funds awaiting investment or distribution in affiliates.

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

**SECTION 1.** A new section to chapter 6-05 of the North Dakota Century Code is created and enacted as follows:

**Deposit of trust funds awaiting investment or distribution in affiliates.** A bank or trust company qualified to and acting as fiduciary or cofiduciary in this state may deposit trust funds awaiting investment or distribution in a bank, including, without limitation, a bank that owns or controls, or that is owned or controlled by a corporation that owns or controls, the bank or trust company.

Approved March 21, 1995

Filed March 23, 1995

**CHAPTER 89****HOUSE BILL NO. 1176**

(Representative Clayburgh)

**CREDIT UNION COMPUTER SERVICER  
EXAMINATIONS**

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to examination of credit union computer servicers.

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

**SECTION 1.** A new section to chapter 6-06 of the North Dakota Century Code is created and enacted as follows:

**Examination of credit union computer servicers.** The commissioner may conduct an examination or inspect the records and operation of any computer servicer providing data processing services for any credit union under the department of banking and financial institutions' jurisdiction.

Approved March 31, 1995

Filed March 31, 1995

**CHAPTER 90****SENATE BILL NO. 2287**

(Senators Tomac, St. Aubyn)

**CREDIT UNION OFFICER BORROWINGS LIMITATION**

AN ACT to amend and reenact section 6-06-20 of the North Dakota Century Code, relating to the borrowing of moneys by credit union directors and committee members.

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

**SECTION 1. AMENDMENT.** Section 6-06-20 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-20. Borrowings of directors and committee members limited - Repayment of loans.** No director or member of any committee may borrow from the credit union in which the director or member holds office more than ~~two thousand five hundred~~ ten thousand dollars plus pledged shares and deposits less any loan balance therein, unless the application is approved by three-fourths of the other members of the board of directors. The director or member may guarantee or endorse paper for other borrowers. A borrower may repay the borrower's loan in whole or in part on any day that the office of the credit union is open for business.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 91****HOUSE BILL NO. 1438**

(Representative Mickelson)

(Senator Krebsbach)

**CHECKS ISSUED WITHOUT ACCOUNT**

AN ACT to amend and reenact section 6-08-16.1 of the North Dakota Century Code, relating to issuing a check or draft without an account; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 6-08-16.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08-16.1. Issuing check or draft without account - Penalty.** Any person who issues any check, draft, or order upon any bank or depository, for the payment of money, and, at the time of ~~such~~ the issuance does not have an account with the bank or depository upon which the check, draft, or order was written, is guilty of a class A misdemeanor.

Approved March 1, 1995

Filed March 2, 1995

**CHAPTER 92****SENATE BILL NO. 2479**

(Senators Krebsbach, Langley, Lips, B. Stenehjem)

(Representatives Carlisle, Keiser)

**DISHONORED CHECK OFFENSE CONSOLIDATION**

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to the consolidation of offenses for dishonored checks.

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

**SECTION 1.** A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

**Consolidation of offenses - Dishonored checks.** When the same person commits two or more offenses under sections 6-08-16, 6-08-16.1, and 6-08-16.2 in more than one county of this state, the offenses may be combined and prosecution may be brought in any county in which one of the dishonored checks was issued.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 93****SENATE BILL NO. 2314**

(Senators Robinson, Redlin, Streibel)  
(Representatives Nichols, Svedjan)

**POLITICAL SUBDIVISION INVESTMENT OF SURPLUS FUNDS**

AN ACT to amend and reenact sections 6-08.1-03, 21-04-09, and 21-06-07 of the North Dakota Century Code, relating to confidentiality of financial institution customer information and the pledge of securities and the investment of surplus funds by political subdivisions.

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

**SECTION 1. AMENDMENT.** Section 6-08.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08.1-03. Duty of confidentiality.** A financial institution may not disclose customer information to any person, governmental agency, or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this chapter.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this chapter.
4. For the purpose of reporting a suspected violation of the law in accordance with this chapter.
5. For the purpose of notifying the commissioner of agriculture that a financial institution has notified a customer of the availability of the North Dakota agricultural mediation service.
6. As part of the disclosure made of deposits of public corporations with financial institutions in the security pledge schedule verified by the custodian of securities pursuant to section 21-04-09.

<sup>33</sup> **SECTION 2. AMENDMENT.** Section 21-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**21-04-09. Pledge of security in place of depository bond.** The board of any public corporation may accept from any financial institution, as security for

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<sup>33</sup> Section 21-04-09 was also amended by section 1 of House Bill No. 1079, chapter 241.



repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, such board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities which are eligible for such pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. Such securities may and securities sold under agreements to repurchase as described in section 21-06-07 must be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon, which financial institution prior thereto has been approved as a custodian for such purpose by the state auditor. Whenever any such securities are so deposited for safekeeping with any custodian, such custodian shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging such securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities so pledged. The securities so substituted must, at the time of such substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of such substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered or certified mail to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository financial institution.

Any depository financial institution may fulfill the pledge of securities requirements of this section by maintaining a security pledge schedule that establishes the following:

1. The names of all public bodies maintaining deposits with the financial institution.
2. The amount of each deposit maintained by each public body.
3. The amount of federal deposit insurance corporation insurance applied to each account.
4. The net deposits exceeding federal deposit insurance corporation coverage for each account.
5. The amount of net deposit exceeding federal deposit insurance corporation deposit insurance multiplied by one hundred ten percent for each account.
6. The amount of securities needed to be pledged to fulfill the requirements of this section.

7. The total number of qualified securities pledged by the financial institution under the requirements of this section.

A financial institution is in compliance with this section as long as the security pledge schedule discloses the total qualified securities pledged in excess of the total pledges needed for a total amount of deposits maintained with all the public bodies with the financial institution as verified by the custodian of the securities every three months and copies thereof are provided to the custodian of the securities and to each of the public corporations maintaining deposits with the financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution to the extent that such deposits are insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or the national credit union association.

<sup>34</sup> **SECTION 3. AMENDMENT.** Section 21-06-07 of the North Dakota Century Code is amended and reenacted as follows:

**21-06-07. Political subdivisions may invest surpluses.** From and after the passage and approval of this section, it is lawful for counties, cities, school districts, park districts, and townships in this state to invest surpluses in their general fund, or surpluses in any special or temporary fund, in bonds, treasury bills and notes or other securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof, or in securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above; provided, however, that bonds, treasury bills and notes or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities shall be authorized to convert said obligations into cash.

Approved March 13, 1995

Filed March 13, 1995

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<sup>34</sup> Section 21-06-07 was also amended by section 1 of House Bill No. 1246, chapter 242.

**CHAPTER 94****SENATE BILL NO. 2201**

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

**BANK OF NORTH DAKOTA LOAN PURCHASE AND PARTICIPATION**

AN ACT to create and enact a new subdivision to subsection 1 of section 6-09-15 of the North Dakota Century Code, relating to purchase of loans by the Bank of North Dakota; and to amend and reenact subsection 3 of section 6-09-15 of the North Dakota Century Code, relating to participation in loans by the Bank of North Dakota.

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

**SECTION 1.** A new subdivision to subsection 1 of section 6-09-15 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action, or from the receiver of the participating lender's assets.

**SECTION 2. AMENDMENT.** Subsection 3 of section 6-09-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Purchase participation interests in loans made or held by banks, bank holding companies, state or federally chartered lending agencies or institutions, ~~or~~ any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 95****SENATE BILL NO. 2152**

(Agriculture Committee)

(At the request of the Bank of North Dakota)

**BEGINNING FARMER REVOLVING LOAN FUND  
INTEREST RATE**

AN ACT to amend and reenact subsection 4 of section 6-09-15.5 of the North Dakota Century Code, relating to the beginning farmer revolving loan fund interest rate.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 6-09-15.5 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A loan made from the fund must have the interest rate fixed at one percent below the Bank's then current base rate for the first five years with a maximum rate of six percent per year ~~and fixed again at one percent below the Bank's then current base rate for the next five years with a maximum rate of eight percent per year.~~ For the remaining period of the loan, interest must be charged and may float and variable at one percent below the Bank's then current base rate for the second five years. During the second five years, the variable rate must be adjusted annually on the anniversary date. The rate during the remaining term of the loan floats at the Bank's base rate as in effect from time to time.

Approved April 5, 1995

Filed April 6, 1995

**CHAPTER 96****HOUSE BILL NO. 1473**

(Representatives Kaldor, Nichols, Sitz)  
(Senators Redlin, C. Nelson)

**INDUSTRIAL COMMISSION MEMBER LOAN  
DISCLOSURE**

AN ACT relating to limitations on loans by the Bank of North Dakota and disclosure of interests in loans by members of the industrial commission.

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

**SECTION 1. Limitations on loans by the Bank of North Dakota - Disclosure of interests in certain loans.** Notwithstanding any other provision of law, the Bank of North Dakota may not make any loan or otherwise give its credit to a member of the industrial commission during the member's term on the industrial commission. Before taking office, a member of the industrial commission shall file a statement with the Bank of North Dakota indicating any personal interest that that member has in any loan or loan application in existence or pending at any time during the member's term on the industrial commission.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 97****HOUSE BILL NO. 1138**

(Political Subdivisions Committee)

(At the request of the North Dakota Municipal Bond Bank)

**MUNICIPAL BOND BANK DEFINITIONS, LOANS, AND RESERVES**

AN ACT to amend and reenact subsections 5 and 6 of section 6-09.4-03, section 6-09.4-06, and subsection 4 of section 6-09.4-10 of the North Dakota Century Code, relating to the definitions applicable to the municipal bond bank, the lending powers of the municipal bond bank, and required debt service reserve for bonds of the municipal bond bank.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 6-09.4-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Municipal security" means an evidence of indebtedness issued by a political subdivision ~~and payable from taxes or from rates, revenues, charges, or assessments; or distributions of revenue pursuant to a state appropriation or statutory or constitutional provision or under currently existing contracts of the bureau of Indian affairs; or payable from a pledge of property~~, but does not include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as an "exempt facility bond" as defined under 26 U.S.C. 142(a)(4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:
- a. A facility for the furnishing of water.
  - b. A wastewater facility.
  - c. A nonpoint source pollution control facility.

**SECTION 2. AMENDMENT.** Subsection 6 of section 6-09.4-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Political subdivision" means a political subdivision of the state or an agency or authority of a political subdivision of the state as authorized by law including, but not limited to, a county, city, school district, township, park district, airport authority, city or county housing authority, municipal parking authority, municipal pipeline authority, irrigation district, board of drainage commissioners, fire protection district, or water resource district and any member-owned association, nonprofit corporation, or similar entity or organization established and organized primarily for operating a rural water distribution system;

- a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
- b. The state department of health and consolidated laboratories, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
  - (1) Operating any public water system that is subject to chapter 61-28.1.
  - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
- c. The Bank of North Dakota, for purposes of the revolving loan fund program established by chapter 61-28.2.

**SECTION 3. AMENDMENT.** Section 6-09.4-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-09.4-06. Lending and borrowing powers generally.** The bond bank is ~~authorized to may~~ lend money to political subdivisions through the purchase and holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase by the bond bank under this chapter and for which the principal amount of any one issue does not exceed two hundred thousand dollars. However, the bond bank may lend money to political subdivisions, through the purchase and holding of securities issued by the political subdivisions without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the bond bank to purchase and hold the securities. The authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the bond bank, the authorizing resolution must state reasons for the bond bank's involvement in the bond issue. The bond bank may hold such municipal securities for any length of time it finds to be necessary. The bond bank, for the purposes authorized by this chapter, ~~is authorized to may~~ issue its bonds payable solely from the revenues available to the bond bank which are authorized or pledged for payment of bond bank obligations, and to otherwise assist political subdivisions as provided in this chapter.

The bond bank may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.

Bonds of the bond bank issued under this chapter are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the bond bank is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the bond bank's obligations are obligations of the bond bank.

All expenses incurred in carrying out the purposes of this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the bond bank to incur any indebtedness or liability on behalf of or payable by the state.

**SECTION 4. AMENDMENT.** Subsection 4 of section 6-09.4-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the legislative assembly and paid to the bond bank for deposit in ~~said~~ the reserve fund, such sum, if any, as shall be certified by the industrial commission as necessary to restore ~~said~~ the reserve fund to an amount equal to the required debt service reserve. However, the commission may approve a resolution for the issuance of bonds, as provided by section 6-09.4-06, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under that resolution.

Approved April 11, 1995  
Filed April 12, 1995



## CHAPTER 98

## SENATE BILL NO. 2305

(Senators Wanzek, Tomac)

(Representatives Johnson, Kaldor)

FARM MANAGEMENT DELIVERY SYSTEM AND  
AGRICULTURAL MEDIATION SERVICE

AN ACT to amend and reenact sections 6-09.10-02.1, 6-09.10-03, and subsection 1 of section 6-09.10-06 of the North Dakota Century Code, relating to funding of a coordinated farm management delivery system and extension of the expiration date of the agricultural mediation service; to provide a continuing appropriation; and to declare an emergency.

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

<sup>35</sup> SECTION 1. AMENDMENT. Section 6-09.10-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-02.1. Additional duties of board. In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.
3. Recommend policies and procedures regarding the adult farm management program to the state board of vocational education.
4. ~~Develop and administer a grant program to provide farmers with access to the farm diversification analytic system. The program shall coordinate~~ Coordinate a farm management delivery system among the adult farm management program, agricultural mediation service, and the North Dakota state university ~~extension service~~. The system must be available to any farmer and may be funded from moneys available in the fund described in this chapter, fees paid by farmers, or other sources.

SECTION 2. AMENDMENT. Section 6-09.10-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The department of agriculture shall administer the agricultural mediation service. The commissioner of agriculture shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve

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<sup>35</sup> Section 6-09.10-02.1 was also amended by section 2 of House Bill No. 1289, chapter 108.

farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers and others, either of whom may request assistance. The board may charge the farmer and others a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~1995~~ 1997. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

**SECTION 3. AMENDMENT.** Subsection 1 of section 6-09.10-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases and coordination and operation of a farm management delivery system, as provided in this chapter. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund are hereby appropriated for the purpose purposes of providing subsidies in accordance with this chapter. Any moneys generated by the farm management delivery system must be allocated by the board to the adult farm management program, the agricultural mediation services, and North Dakota state university for expenses related to the jointly developed and implemented farm management delivery system. The board may not allocate more than forty percent of these moneys to any one of these entities.

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

Approved April 12, 1995  
Filed April 13, 1995

# CONTRACTS AND OBLIGATIONS

## CHAPTER 99

### HOUSE BILL NO. 1364

(Representatives Svedjan, Dorso)

(Senators St. Aubyn, G. Nelson, Robinson, DeMers)

### ATHLETE AGENT CONTRACTS

AN ACT relating to contracts between athletes and athlete agents; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### SECTION 1. Definitions.

1. "Agent contract" means any agreement under which an athlete authorizes an athlete agent to negotiate with or solicit on behalf of the athlete a professional sports team for the employment of the athlete by a professional sports team.
2. "Athlete" means an individual who is eligible to participate in intercollegiate sports contests as a student of an institution of higher education. The term includes an athlete who becomes ineligible to participate in intercollegiate sports contests because of a declaration to be open for recruitment by a professional sports team, except this type of athlete may be contacted and contracted with by an athlete agent.
3. "Athlete agent" means a person who for compensation directly or indirectly recruits or solicits an athlete to enter into an agent contract, professional sports service contract, or financial services contract with that person; or who for a fee procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team. The term does not include an attorney acting as legal counsel.
4. "Eligibility" means a period of time during which an athlete is enrolled as a student at an institution and is permitted to compete in intercollegiate athletic events.

**SECTION 2. Completion of eligibility.** Eligibility continues until the athlete is rendered ineligible or there is a declaration of written intent to forego any remaining eligibility. An athlete's eligibility ends at the finish of the last sports contest in the athlete's sport that is sanctioned by the athlete's final year of eligibility, as determined by the governing body of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

#### SECTION 3. Athlete agent and athlete contract requirements.

1. Each contract between an athlete and athlete agent must include the following statements printed in at least ten-point type that is boldfaced,

capitalized, underlined, or otherwise printed in a style that is distinguishable from other written material:

- a. Do not sign this contract until you have read it or if it contains blank spaces.
  - b. If you decide that you do not wish to purchase the services of the athlete agent, you may cancel this contract by notifying that athlete agent in writing of your desire to cancel the contract not later than the sixteenth day after the date on which you sign this contract.
  - c. **Warning:** A student athlete signing this contract will lose eligibility to compete in intercollegiate athletics.
  - d. If you sign this contract before your last intercollegiate contest and do not notify your college or university of this contract, your team may be required to forfeit all games in which you participate after signing this contract, you may cause your team to be ineligible for postseason games, and your team may have additional penalties imposed.
2. The contract must include a schedule of fees that the athlete agent may collect from the athlete, state all fees and percentages to be paid by the athlete to the athlete agent, and must describe all professional services to be rendered in return for each fee. The athlete agent may impose charges only in accordance with the fee schedule. The fee schedule may be changed, but a change does not become effective until the seventh day after the date on which the change was made. If a multiyear professional sport services contract is negotiated by an athlete agent for an athlete, the athlete agent may not collect in any twelve-month period, for services in negotiating the contract, a fee in excess of the amount the athlete will receive under the contract in the twelfth month.
  3. If the athlete is a student at an institution of higher education located in this state, the athlete agent shall file a copy of the contract with the athletic director of the institution. The athlete agent shall file the contract not later than the third day after the date on which the contract was signed by the athlete.
  4. As an appendix to each contract, the athlete agent shall include a current copy of published materials relating to athlete agency as provided by the governing body of the national association for the promotion and regulation of intercollegiate athletics for the institution at which the athlete was last eligible.

#### **SECTION 4. Requirements - Prohibitions.**

1. In all forms of advertising used by the athlete agent, the athlete agent shall disclose the name and address of the agent. An athlete agent may not publish or cause to be published any false or misleading information, or give any false information or make any false promises or representations concerning any employment to any person; divide fees with or receive compensation from a person exempt from this Act or a professional sports league or franchise; enter any agreement by which the athlete agent offers anything of value to any employee of an institution of higher education located in this state in return for the

referral of any client by that employee; offer anything of value to induce an athlete to enter an agreement by which the athlete agent will represent the athlete; except as otherwise provided by this Act, enter any agreement with an athlete; or have any financial interest in any entity that is directly involved in the same sport as a person with whom the athlete agent has entered a contractual relationship.

2. This Act does not prohibit an athlete agent from sending to an athlete written materials relating to the professional credentials of the agent, specific services offered by the agent relating to the representation of an athlete in the marketing of an athlete's athletic ability or reputation, or the provision of financial services by the agent to the athlete. This Act does not prohibit an athlete or the athlete's parents, legal guardians, or other advisors from contacting and interviewing an athlete agent to determine that agent's professional proficiency in representing an athlete, marketing the athlete's athletic ability or reputation, or in providing financial services by the agent on behalf of the athlete.

**SECTION 5. Penalties - Remedies.** An athlete agent who willfully violates this Act is guilty of a class A misdemeanor. An athlete agent who violates this Act also is subject to a cause of action for damages, forfeiture of any right of repayment for anything of value received by an athlete as an inducement to enter any contract, a refund of any consideration paid to the athlete agent on an athlete's behalf, and reasonable attorney's fees and court costs incurred by an athlete in suing and recovering against an athlete agent for a violation of this Act.

Approved March 6, 1995

Filed March 7, 1995

# CORPORATIONS

## CHAPTER 100

### HOUSE BILL NO. 1165

(Representative Byerly)

## SECURITIES ACTIVITIES STATUTES OF LIMITATION

AN ACT to create and enact a new subsection to section 10-04-09, a new subsection to section 10-04-10.1, a new subsection to section 10-04-11, a new subsection to section 10-04-15, a new subsection to section 10-04-18, a new subsection to section 43-10.1-06.1, a new section to chapter 43-10.1, a new subsection to section 51-19-09, a new subsection to section 51-19-11, a new subsection to section 51-19-13, a new subsection to section 51-23-07, a new subsection to section 51-23-20, and a new section to chapter 51-23 of the North Dakota Century Code, relating to statutes of limitations and civil remedies for certain commodities activities; to amend and reenact section 10-04-16, subsection 1 of section 10-04-17, subsection 1 of section 43-10.1-06.2, sections 43-10.1-07, 43-10.1-08, subsection 5 of section 51-19-12, subdivisions f, g, and h of subsection 2 of section 51-19-13, and section 51-19-14 of the North Dakota Century Code, relating to statutes of limitations for certain securities and commodities activities and civil remedies for violations of certain pre-need funeral activities and franchise investment activities; and to provide a penalty.

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

**SECTION 1.** A new subsection to section 10-04-09 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

**SECTION 2.** A new subsection to section 10-04-10.1 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

**SECTION 3.** A new subsection to section 10-04-11 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

**SECTION 4.** A new subsection to section 10-04-15 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

<sup>36</sup> SECTION 5. AMENDMENT. Section 10-04-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-16. Orders, injunctions, and prosecutions for violations. ~~Whenever~~ If it ~~shall appear~~ appears to the commissioner, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction ~~which that~~ is prohibited by this chapter or by any order of the commissioner issued ~~pursuant to any section of~~ under this chapter or which is declared to be illegal in this chapter, the commissioner may; ~~in his discretion~~:

1. Issue any order including; ~~but not limited to~~, cease and desist, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any ~~regulation~~, rule; or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. ~~The attorney general; upon the commissioner's request;~~ commissioner may bring actions to recover penalties pursuant to this section in district court. ~~However, any~~ A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if ~~such a written~~ request is made within ten days after receipt of the order. ~~The provisions of subsections~~ Subsections 2, 3, 4, and 5 of section 10-04-12 apply to any hearing conducted ~~hereunder~~ under this subsection. If, after a hearing, the commissioner ~~shall sustain~~ sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:
  - a. The order of the commissioner from which the appeal is taken.
  - b. The grounds upon which a reversal or modification of ~~such the~~ the order is sought.
  - c. A demand for a certified transcript of the record of ~~such the~~ the order.

~~The provisions of subdivisions~~ Subdivisions a and b of subsection 3 of section 10-04-13 apply to an appeal ~~hereunder~~ under this subsection.

2. Apply to the district court of any county in this state for an injunction restraining ~~such the~~ the person and ~~his the person's~~ the person's agents, employees, partners, officers, and directors from continuing ~~such the~~ the act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts ~~may~~ warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be ~~entitled to have~~ issued the court's subpoena requiring the appearance forthwith of any defendant and ~~his the~~ the defendant's agents, employees, partners, officers, or directors, and the

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<sup>36</sup> Section 10-04-16 was also amended by section 2 of House Bill No. 1089, chapter 313.

production of ~~such the~~ documents, books, and records ~~as may appear~~ necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant ~~such the~~ injunction as the facts ~~may~~ warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

3. Refer ~~such any~~ evidence ~~as may be~~ available concerning ~~such the~~ act, practice, or transaction to the ~~attorney general or the proper state's attorney~~ appropriate criminal prosecutor who may, with or without ~~such a~~ the reference, institute the necessary criminal proceedings. ~~In any criminal proceeding, the attorney general or the state's attorney~~ The prosecutor may apply for and on due showing be ~~entitled to have~~ issued the court's subpoena requiring the appearance forthwith of any defendant and ~~his the~~ defendant's agents, employees, partners, officers, and directors, and the production of ~~such any~~ documents, books, and records ~~as may appear~~ necessary for the prosecution of ~~such the~~ criminal proceedings. The court may impose upon any defendant convicted of any of the offenses described in this section ~~such penalty, in accord with the provisions of section 10-04-18, as the facts may warrant.~~

**SECTION 6. AMENDMENT.** Subsection 1 of section 10-04-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. That no action ~~shall may~~ be brought under this section for the recovery of the purchase price after five years from the date of ~~such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation;~~ and

**SECTION 7.** A new subsection to section 10-04-18 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 10-04-09, 10-04-10.1, 10-04-11, and 10-04-15.

**SECTION 8.** A new subsection to section 43-10.1-06.1 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the violation.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-10.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Issue any order, including ~~but not limited to~~ cease and desist, stop, and suspension orders, which ~~he the~~ commissioner deems necessary or appropriate in the public interest or for the protection of purchasers; ~~provided, however, that any.~~ The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a



civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. Any person aggrieved by an order issued pursuant to under this subsection may request a hearing before the commissioner if such the request is made, in writing, within ten days after receipt of the order. Such The hearing and any appeal therefrom must be held in accordance with chapter 28-32 as must be any appeal therefrom.

**SECTION 10. AMENDMENT.** Section 43-10.1-07 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-07. Prosecution for violations of law. If, as a result of verification procedures or investigations as provided in sections 43-10.1-05 and 43-10.1-06.2, or based upon other reliable information, the securities commissioner, after consultation with the attorney general, believes that grounds for criminal prosecution of the operator or manager of any licensed funeral establishment or cemetery association or any other person exist for violation of this chapter or any other law of this state, the securities The commissioner may forward such information and refer any evidence as is available or known to him to the state's attorney of the county having jurisdiction over such concerning a violation for such criminal prosecution of such operator, manager, or other person as the information and evidence requires this chapter or of any rule or order issued under this chapter to the appropriate criminal prosecutor who may, with or without the reference, institute criminal proceedings under this chapter. The criminal prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

**SECTION 11. AMENDMENT.** Section 43-10.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-10.1-08. Penalties.**

1. Any person who willfully violates any provision of this chapter or any rule or order of the commissioner made pursuant to the provisions of under this chapter; or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class ~~G~~ B felony.
2. An information must be filed or an indictment must be found under this chapter within five years after the commissioner or criminal prosecutor knew or reasonably should have known about the facts that are the basis for the prosecution.
3. "Willfully" means the person was aware of the consequences of the person's actions, and proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required. Each act or omission is a separate offense, and a prosecution or conviction for an offense does not bar a prosecution or conviction for any other offense.

**SECTION 12.** A new section to chapter 43-10.1 of the North Dakota Century Code is created and enacted as follows:

Statute of limitations. No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This section does not apply to section 43-10.1-06.1.

<sup>37</sup> **SECTION 13.** A new subsection to section 51-19-09 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

**SECTION 14.** A new subsection to section 51-19-11 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

**SECTION 15. AMENDMENT.** Subsection 5 of section 51-19-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. No action may be brought under this section after ~~three~~ five years from the date of ~~such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based~~ that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 51-19-09 and 51-19-11.

**SECTION 16. AMENDMENT.** Subdivisions f, g, and h of subsection 2 of section 51-19-13 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- f. If, in the opinion of the commissioner, the offer of any franchise is subject to registration under this chapter and it is being or has been offered for sale without ~~such~~ the offer first being registered, the commissioner may order the franchiser or offeror of ~~such~~ the franchise to desist and refrain from the further offer or sale of ~~such~~ the franchise unless and until ~~such~~ the offer has been duly registered under this chapter. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, after ~~such~~ an the order has been made, a request for a hearing is filed in writing by the person to whom ~~such~~ the order was directed, a hearing must be held; ~~unless such.~~

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<sup>37</sup> Section 51-19-09 was also amended by section 6 of House Bill No. 1089, chapter 313.

after the request is made or the person affected consents to a later date, ~~such the order must be deemed~~ is rescinded.

- g. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this chapter is being or has been offered for sale without complying with ~~the provisions of~~ section 51-19-04 or subsection 2 of section 51-19-11, the commissioner may order the franchiser or offeror of ~~such the~~ franchise to desist and refrain from the further offer or sale of ~~such the~~ franchise unless and until ~~such an~~ offer is made in compliance with this chapter. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, after ~~such an~~ the order has been made, a request for a hearing is filed in writing by the person to whom ~~such the~~ order was directed, a hearing must be held. Unless ~~such the~~ hearing is commenced within fifteen business days after the date, ~~such the order must be deemed~~ is rescinded.
- h. The commissioner may refer ~~such~~ evidence ~~as is~~ available concerning any violation of this chapter or of any rule or order ~~hereunder issued under this chapter~~ to the ~~county attorney of the county in which the violation occurred~~ appropriate criminal prosecutor who may, with or without ~~such a~~ the reference, institute ~~appropriate~~ criminal proceedings under this chapter. The criminal prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

**SECTION 17.** A new subsection to section 51-19-13 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 51-19-09 and 51-19-11.

**SECTION 18. AMENDMENT.** Section 51-19-14 of the North Dakota Century Code is amended and reenacted as follows:

**51-19-14. Criminal penalties.**

1. Any person who willfully violates any provision of this chapter or who willfully violates any rule or order under this chapter is guilty of a class B felony; ~~but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.~~
2. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of any franchise or willfully engages, directly or indirectly, in any act, practice,

or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any franchise is guilty of a class B felony.

3. Nothing in this chapter limits the power of the state to punish any person for any conduct ~~which~~ that constitutes a crime.
4. An information must be filed or an indictment must be found under this chapter within five years after the commissioner or criminal prosecutor knew or reasonably should have known about the facts that are the basis for the prosecution.
5. "Willfully" means the person was aware of the consequences of the person's actions, and proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required. Each act or omission is a separate offense, and a prosecution or conviction for an offense does not bar a prosecution or conviction for any other offense.

**SECTION 19.** A new subsection to section 51-23-07 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

<sup>38</sup> **SECTION 20.** A new subsection to section 51-23-20 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this chapter after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under section 51-23-07.

**SECTION 21.** A new section to chapter 51-23 of the North Dakota Century Code is created and enacted as follows:

**Remedies.** Every sale or contract for sale made in violation of this chapter, or of any rule or order issued by the commissioner under this chapter, is voidable at the election of the purchaser. The person making a sale or contract for sale, and every director, officer, salesperson, or agent of or for the person who participated or aided in any way in making the sale is jointly and severally liable to the purchaser. The purchaser may sue either to recover the full amount paid by the purchaser and any court costs, interest at a rate consistent with section 47-14-05, and reasonable attorney's fees, less the amount of any income received on the commodities upon tender to the seller of the commodities sold or of the contracts made. If the person no longer owns the commodities, the person may sue for damages that would be recoverable upon a tender, less the value of the commodities when the purchaser disposed of the commodities and interest from the date of disposition. However:

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<sup>38</sup> Section 51-23-20 was also amended by section 7 of House Bill No. 1089, chapter 313.

1. No action may be brought under this section for the recovery of the purchase price after five years from the date of the sale or contract for sale.
2. No purchaser may claim or have the benefit of this section if the purchaser refused or failed to accept, within thirty days from the date of the offer, an offer in writing of the seller to take back the commodity contract in question and to refund the full amount paid by the purchaser, together with interest on the amount for the period from the date of payment by the purchaser to the date of repayment.
3. This chapter does not limit any statutory or common-law right of any person in any court for any act involved in the sale of commodities.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 101****SENATE BILL NO. 2349**

(Senator W. Stenehjem)

**CORPORATION AND LIMITED LIABILITY COMPANY  
ANNUAL REPORTS**

AN ACT to create and enact two new subsections to section 10-06.1-17 and section 10-23-03.3 of the North Dakota Century Code, relating to annual reports required of farm corporations and limited liability companies engaged in farming and reinstatement of corporations and foreign corporations following dissolution or revocation for failure to file an annual report; to amend and reenact sections 10-23-01, 10-23-02, 10-23-03, and 10-23-06 of the North Dakota Century Code, relating to annual reports of domestic and foreign corporations and license fees paid by corporations; and to provide a penalty.

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

**SECTION 1.** Two new subsections to section 10-06.1-17 of the 1993 Supplement to the North Dakota Century Code are created and enacted as follows:

A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section 10-23-02 except that the penalties must be calculated from the date of the report required by this section.

A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section.

<sup>39</sup> **SECTION 2. AMENDMENT.** Section 10-23-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-23-01. Annual report of domestic and foreign corporations.** Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by sections 10-23-02 and 10-23-03, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. The address of the registered office of the corporation in this state, the name of its registered agent in this state at that address, and the address of its principal office.

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<sup>39</sup> Section 10-23-01 was also amended by section 45 of Senate Bill No. 2343, chapter 103.

3. A brief statement of the character of the business in which the corporation is actually engaged in this state.
4. The names and respective addresses of the directors and officers of the corporation.
5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
6. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
7. A statement, expressed in dollars, of the amount of stated capital of stockholders' equity in the corporation. "Stated capital" means, at any particular time, Stockholders' equity is the net difference between total assets and total liabilities and may include the sum of the following:
  - a. The par value of all shares of the corporation having a par value, which have been issued Consideration received for issued shares or capital stock.
  - b. The amount of the consideration received by the corporation for all shares of the corporation without par value, which have been issued; except such part of the consideration thereof as may have been allocated to capital surplus in a manner permitted by law Additional paid-in capital.
  - c. Such amounts not included in subdivisions a and b as have been transferred to stated capital of the corporation; whether upon the issue of shares as a share dividend or otherwise; minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized; the stated capital of a foreign corporation must be determined on the same basis and in the same manner as the stated capital of a domestic corporation; for the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23. Capital surplus.
  - d. Undivided profits.
  - e. Retained earnings or retained deficit.
  - f. Unrealized holding gains or losses.
  - g. Consideration paid for treasury stock.
  - h. Any other amounts that the corporation has transferred to stockholders' equity.

Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stockholders' equity of a foreign corporation must be determined on the same basis and in the same manner as the stockholders' equity of a domestic corporation, for

the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23.

8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the total gross amount of business transacted by income of the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof transacted accumulated by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such the report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted total gross income must be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December.
9. Such Any additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such the corporation.

Such The annual report must be made on forms prescribed and furnished by the secretary of state, and the information therein contained must be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which must be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. It must be signed as prescribed in subsection 28 of section 10-19.1-01 or, if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation. The secretary of state may destroy all the annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under subsections 6, 7, and 8 to any person, except a person who is verified to be a shareholder of the corporation or a legal representative of the shareholder for which information is requested or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.

**SECTION 3. AMENDMENT.** Section 10-23-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-23-02. Filing of annual report of domestic corporation - Penalty for late filing.** The annual report for the preceding year of a domestic corporation must be delivered to the secretary of state on or before the first day of August of each year, except that the first annual report of a domestic corporation must be filed on or before the first day of August of the year next succeeding the calendar year in which its certificate of incorporation was issued by the secretary of state or the year next succeeding the calendar year of the effective date stated in the articles of incorporation. Proof to the satisfaction of the secretary of state that on or before the first day of August, such the report was postmarked by the United States postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, must be deemed a compliance with this requirement. If the secretary of state finds that such the report conforms to the requirements of section



10-23-01, the report must be filed. If the report does not ~~so~~ conform, it must be returned to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file ~~such~~ the report within the time hereinabove provided do not apply, if ~~such~~ the report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after ~~such~~ the annual report was returned to the corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a written application for an extension is received before the filing deadline. A corporation with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Each domestic corporation that fails or refuses to file its annual report for any year within the time prescribed by this section is subject to a penalty of twenty dollars if filed within ninety days after the due date, or sixty dollars if filed thereafter. A corporation which fails to file its annual report along with those statutory filing and penalty fees within one year after the date required by this section ceases to exist and is considered involuntarily dissolved by operation of law.

**SECTION 4. AMENDMENT.** Section 10-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**10-23-03. Filing of annual report of foreign corporations - Penalty for late filing.** The annual report for the preceding year of a foreign corporation shall be delivered to the secretary of state on or before the ~~first fifteenth~~ day of ~~April~~ May of each year, except that the first annual report of a foreign corporation shall be filed on or before the ~~first fifteenth~~ day of ~~April~~ May of the year next succeeding the calendar year in which its certificate of authority was issued by the secretary of state. Proof to the satisfaction of the secretary of state that on or before the ~~first fifteenth~~ day of ~~April~~ such May the report was postmarked by the United States postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that ~~such~~ the report conforms to the requirements of section 10-23-01, the report shall be filed. If the report does not ~~so~~ conform, it shall promptly be returned to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file ~~such~~ the report within the time hereinabove provided shall not apply, if ~~such~~ the report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after ~~such~~ the annual report was returned to the corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a written application for an extension is received before the filing deadline. A corporation with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Each foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by this section shall be subject to a penalty of twenty dollars.

**SECTION 5.** Section 10-23-03.3 of the North Dakota Century Code is created and enacted as follows:

**10-23-03.3. Reinstatement after involuntary dissolution or revocation.** A corporation that was dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be

reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a one hundred thirty-five dollar fee. The fees must be paid and the report filed within one year following the dissolution or revocation. Reinstatement under this section does not affect the rights or liabilities for the time from the termination or revocation to the reinstatement.

**SECTION 6. AMENDMENT.** Section 10-23-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-23-06. License fees payable by domestic corporations - Exempting building and loan and savings and loan associations.** The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation.
2. Filing articles of amendment increasing the number or value of authorized shares.
3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.
4. Filing an annual report after authorized shares have been issued.

The license fees must be the sum of fifty dollars for the first fifty thousand dollars of its authorized shares, or fraction thereof, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.

The license fees payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.

For the purposes of this section, shares without par value must be considered worth one dollar per share.

The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares. Thereafter, a corporation may postpone the payment for any additional amounts until the filing of an annual report after the unpaid shares are issued. Additional amounts must be paid in increments of ten thousand dollars of its authorized shares.

The provisions of this section do not apply to a building and loan or savings and loan association.

Approved April 12, 1995

Filed April 13, 1995

## CHAPTER 102

### SENATE BILL NO. 2222

(Senators Thane, Lips, Heitkamp)  
(Representative Hausauer)

## COOPERATIVE ASSOCIATION STOCK AND DIVIDENDS

AN ACT to amend and reenact subsection 1 of section 10-15-20 and section 10-15-21 of the North Dakota Century Code, relating to the rate of dividends upon stock issued by a cooperative association and the issuance of stock certificates by a cooperative association; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 10-15-20 of the North Dakota Century Code is amended and reenacted as follows:

1. A cooperative organized with capital stock may issue the amount of stock stated in its articles. ~~Such~~ The stock may be divided into two or more classes with ~~such~~ the designations, preferences, limitations, and relative rights as ~~shall be~~ stated in the articles, except that:
  - a. Stock as such has no voting power.
  - b. Stock without par value ~~shall~~ may not be authorized or issued.
  - c. The rate of dividends upon stock ~~shall~~ may not exceed ~~six~~ eight percent of its par value for any year, and dividends may not be cumulative.

**SECTION 2. AMENDMENT.** Section 10-15-21 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-21. Stock certificates.** No stock certificate may be issued except upon payment of at least the par value of the stock it represents. No cooperative ~~shall~~ may issue stock or bonds except for money, labor done, or money or property actually received. All fictitious increase of stock or indebtedness ~~shall be~~ are void. If payment for stock is not in money, the board ~~shall determine the~~ value of the consideration ~~shall be determined by the board~~ and ~~such~~ the determination, if made in good faith, ~~shall be~~ is conclusive.

Each certificate for stock ~~shall~~ must bear the manual or facsimile signature of a principal officer and ~~shall~~ must state:

1. The name of the cooperative, the number, par value and class of the shares represented by the certificate, and whether or not it is membership stock.
2. Any restrictions on the issuance or transfer of ~~such~~ the stock, including those provided by law and the articles.

3. If more than one class of stock is authorized, the designation of the several classes, and their respective preferences, limitations, and relative rights. In lieu of the full statement, this information may be given in summary form, or the certificate may state that the cooperative will, upon request, furnish the information required by this subsection.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 1995

Filed March 3, 1995

## CHAPTER 103

### SENATE BILL NO. 2343

(Senators W. Stenehjem, Langley, G. Nelson)  
(Representatives Kliniske, Kretschmar, Mahoney)

## LIMITED LIABILITY COMPANY AND CORPORATION LAW REVISIONS

AN ACT to create and enact three new subsections to section 1-01-49 of the North Dakota Century Code, relating to the definition of individual, organization, and person; to amend and reenact sections 5-01-01, 5-02-02, 10-19.1-01, subsections 4 and 5 of section 10-19.1-10, subdivision b of subsection 1 of section 10-19.1-13, subsection 3 of section 10-19.1-16, sections 10-19.1-18, 10-19.1-19, subsection 6 of section 10-19.1-20, subsection 12 of section 10-19.1-26, subsection 2 of section 10-19.1-30, subsection 3 of section 10-19.1-43, sections 10-19.1-44, 10-19.1-46, subsection 2 of section 10-19.1-51, section 10-19.1-53, subsection 3 of section 10-19.1-61, sections 10-19.1-61.1, 10-19.1-62, subsections 4 and 9 of section 10-19.1-65, subsection 2 of section 10-19.1-68, section 10-19.1-73, subsection 3 of section 10-19.1-73.1, subsection 2 of section 10-19.1-74, subsections 2 and 3 of section 10-19.1-79, subsection 1 of section 10-19.1-80, subsection 4 of section 10-19.1-84, section 10-19.1-85, subsections 1 and 3 of section 10-19.1-87, subsections 5 and 10 of section 10-19.1-88, subsection 1 of section 10-19.1-89, subsections 1 and 7 of section 10-19.1-91, subsections 1 and 4 of section 10-19.1-92, subsection 1 of section 10-19.1-93, subsection 1 of section 10-19.1-95, subsections 3 and 4 of section 10-19.1-98, subsection 6 of section 10-19.1-100, subsection 1 of section 10-19.1-104, sections 10-19.1-106, 10-19.1-109, subsection 1 of section 10-19.1-110, sections 10-19.1-115, 10-19.1-129, 10-23-01, 10-32-02, subsections 1 and 2 of section 10-32-07, subdivision b of subsection 1 of section 10-32-10, subsections 5, 7, 12, 14, and 21 of section 10-32-23, sections 10-32-28, 10-32-30, 10-32-31, 10-32-32, 10-32-33, subsection 2 of section 10-32-35, subdivision d of subsection 1 of section 10-32-50, subdivision b of subsection 1 of section 10-32-51, subsection 4 of section 10-32-64, sections 10-32-88, 10-32-89, subsection 1 of section 10-32-97, section 10-32-98, subsection 1 of section 10-32-99, subsections 1 and 3 of section 10-32-108, section 10-32-109, subsection 1 of section 10-32-112, subsection 1 of section 10-32-114, sections 10-32-131, 10-32-136, subsection 1 of section 10-32-138, sections 10-32-140, 10-32-143, subsection 2 of section 10-32-144, subsections 1, 2, and 3 of section 10-32-149, subsection 3 of section 40-57.1-04.4, sections 57-38-60.2, 57-39.2-18.1, 57-43.1-17.3, and 57-43.2-16.2 of the North Dakota Century Code, relating to retail licensing qualifications for corporations, limited liability companies, limited partnerships, and general partnerships, the Business Corporation Act, limited liability companies, and the responsibility of a limited liability company or its officers, governors, or managers to file required tax returns or pay the tax due; to repeal section 1-01-28 of the North Dakota Century Code, relating to the definition of person; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>40</sup> SECTION 1. Three new subsections to section 1-01-49 of the North Dakota Century Code are created and enacted as follows:

"Individual" means a human being.

"Organization" includes a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited partnership, partnership, trust, or any legal or commercial entity.

"Person" means an individual, organization, government, political subdivision, or governmental agency or instrumentality.

<sup>41</sup> SECTION 2. AMENDMENT. Section 5-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-01. Definitions. In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing more than one-half of one percent of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.
7. "Microbrew pub" means a brewer that brews twenty-five or fewer barrels of beer per week and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
8. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.

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<sup>40</sup> Section 1-01-49 was also amended by section 1 of Senate Bill No. 2344, chapter 55, and section 2 of House Bill No. 1027, chapter 120.

<sup>41</sup> Section 5-01-01 was also amended by section 1 of House Bill No. 1143, chapter 73; section 1 of Senate Bill No. 2198, chapter 74; and section 2 of Senate Bill No. 2344, chapter 55.

9. "Sparkling wine" means wine made effervescent with carbon dioxide.

9+ 10. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

<sup>42</sup> SECTION 3. AMENDMENT. Section 5-02-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-02. **Qualifications for license.** No retail license may be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. The applicant, other than ~~corporate an organization~~, must be a legal resident of the United States and a resident of the state of North Dakota and be a person of good moral character.

2. If applicant is a:

a. A corporation, ~~the~~ then:

(1) The manager of the licensed premises and the officers; and directors; ~~and stockholders~~ must be legal residents of the United States and persons of good moral character; and

(2) The shareholders:

(a) Who are individuals, must be legal residents of the United States and of good moral character; and

(b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.

b. A limited liability company, then:

(1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.

(2) The members:

(a) Who are individuals, must be legal residents of the United States and of good moral character; and

(b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

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<sup>42</sup> Section 5-02-02 was also amended by section 3 of Senate Bill No. 2344, chapter 55.





<sup>43</sup> SECTION 4. AMENDMENT. Section 10-19.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box.
3. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution.
  - b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Board" or "board of directors" means the board of directors of a corporation.
5. "Board member" means:
  - a. An individual serving on the board of directors in the case of a corporation; and
  - b. An individual serving on the board of governors in the case of a limited liability company.
6. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
7. "Closely held corporation" means a corporation which does not have more than thirty-five shareholders.

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<sup>43</sup> Section 10-19.1-01 was also amended by section 4 of Senate Bill No. 2344, chapter 55.

8. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.
9. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
10. "Director" means a member of the board.
11. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
12. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
- ~~13.~~ 14. "Filed with the secretary of state" means that a signed original of a document, together with the fees provided in chapter 10-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall then endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state.
- ~~14.~~ 15. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.
- ~~14.~~ 15. "Foreign limited liability company" means a limited liability company organized for profit that is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.
- ~~15.~~ 16. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
- ~~16.~~ 17. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
- ~~17.~~ 18. A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
- ~~18.~~ 19. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a

receiver, guardian, custodian, or conservator of the person or estate of a person.

~~19.~~ 20. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.

~~20.~~ 21. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation.

a. In all other cases, "notice" is given to a person:

- (1) When mailed to the person at an address designated by the person or at the last known address of the person; or
- (2) When handed to the person; or
- (3) When left at the office of the person with a clerk or other person in charge of the office; or
  - (a) If there is no one in charge, when left in a conspicuous place in the office; or
  - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.

b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.

c. Notice is deemed received when it is given.

~~21.~~ 22. "Officer" means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 10-19.1-56.

~~22.~~ 23. "Organization" means a domestic or foreign corporation, limited liability company, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

~~23.~~ 24. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

~~24.~~ 25. "Owners" means:

- a. Shareholders in the case of a corporation; and
- b. Members in the case of a limited liability company.

~~25.~~ 26. "Ownership interests" means:

- a. Shares in the case of a corporation; and

- b. Membership interests in the case of a limited liability company.
- 26- 27. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related corporations or limited liability companies, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
27. ~~"Person" includes an individual and an organization.~~
28. "Principal executive office" means an office where the elected or appointed president of a corporation has an office. If the corporation has no elected or appointed president "principal executive office" means the registered office of the corporation.
29. "Related ~~corporation~~ organization" of a specified corporation means a:
- a. A parent or subsidiary of the specified corporation or another;
  - b. Another subsidiary of a parent of the specified corporation;
  - c. A limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation;
  - d. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by the specified corporation;
  - e. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by either:
    - (1) A parent of the specified corporation; or
    - (2) A limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation; or
  - f. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly by a limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
30. "Security" has the meaning given it in subsection 13 of section 10-04-02.
31. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
32. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

33. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
34. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.
35. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
36. "Subsidiary" of a specified corporation means:
- a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations or limited liability companies, by the specified corporation; or
  - b. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.
37. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
38. "Vote" includes authorization by written action.
39. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the person signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

<sup>44</sup> SECTION 5. AMENDMENT. Subsections 4 and 5 of section 10-19.1-10 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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<sup>44</sup> Section 10-19.1-10 was also amended by section 1 of House Bill No. 1319, chapter 104.

4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
  - a. Directors serve for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
  - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
  - c. The method provided in section 10-19.1-41 must be used for removal of directors.
  - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.
  - e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
  - f. ~~A director may call a board meeting; and the~~ The notice of the a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
  - g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
  - h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.
  - i. The board may establish a special litigation committee as provided in section 10-19.1-48.
  - j. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
  - k. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
  - l. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection ~~2~~ 3 of section 10-19.1-73.
  - m. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
  - n. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of an entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-77.
  - o. Indemnification of certain persons is required as provided in section 10-19.1-91.

- p. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.
5. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
  - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
  - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
  - d. Directors may be classified as provided in section 10-19.1-38.
  - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
  - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
  - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
  - h. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
  - i. Additional officers may be designated as provided in section 10-19.1-54.
  - j. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
  - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
  - l. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.
  - m. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
  - n. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
  - o. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.

- p. Notices of shareholder meetings may be required to contain certain information as provided in subsection ~~3~~ 4 of section 10-19.1-73.
- q. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
- r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 4 of section 10-19.1-77.
- s. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
- t. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
- u. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.

**SECTION 6. AMENDMENT.** Subdivision b of subsection 1 of section 10-19.1-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Must contain the word "corporation", "incorporated", or "limited", or must contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." ~~but that word or abbreviation may not be immediately preceded by the word "and" or the character "&"~~.

**SECTION 7. AMENDMENT.** Subsection 3 of section 10-19.1-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision ~~e~~ f, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

**SECTION 8. AMENDMENT.** Section 10-19.1-18 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-18. Procedure for amendment before issuance of when no shares are outstanding.** Before the issuance of shares by a corporation, the articles also may be amended pursuant to section 10-19.1-30 by the incorporators or by the board. The articles may be amended by the board to change or cancel a statement pursuant to subsection ~~3~~ 4 of section 10-19.1-61, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series or at any subsequent time that no shares of that class or series are outstanding by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state. If a statement filed pursuant to subsection 4 of section 10-19.1-61



is cancelled, the shares of the class and series originally covered by the statement have the status of authorized but unissued, undesignated shares, unless the articles otherwise provide. If the articles provide that the cancelled shares may not be reissued, the statement of cancellation must include the information specified in subsection 2 of section 10-19.1-93.

**SECTION 9. AMENDMENT.** Section 10-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-19. Procedure for amendment after issuance of shares.**

1. ~~After~~ Except as otherwise provided in section 10-19.1-18, after the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.
2. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. The provisions of this subsection regarding shareholder proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder govern.
3. Written notice of the shareholders' meeting setting forth the substance of the proposed amendment must be given to each shareholder entitled to vote in the manner provided in section 10-19.1-73 for the giving of notice of meetings of shareholders.
4. The proposed amendment to the articles is adopted:
  - a. When approved by the affirmative vote of the ~~holders of a majority of the voting power of the shares present and entitled to vote~~ shareholders required by section 10-19.1-74, except as provided in subdivision b and in subsection 5; or
  - b. If the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:
    - (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact

the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

- (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

5. An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may be submitted to and approved by the shareholders as provided in subsections 2, 3, and 4.

**SECTION 10. AMENDMENT.** Subsection 6 of section 10-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

6. Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of ~~the same or~~ another class or series;

<sup>45</sup> **SECTION 11. AMENDMENT.** Subsection 12 of section 10-19.1-26 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related ~~corporations'~~ organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

**SECTION 12. AMENDMENT.** Subsection 2 of section 10-19.1-30 of the North Dakota Century Code is amended and reenacted as follows:

2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal,

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<sup>45</sup> Section 10-19.1-26 was also amended by section 11 of Senate Bill No. 2070, chapter 54.

approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-19.1-43.

**SECTION 13. AMENDMENT.** Subsection 3 of section 10-19.1-43 of the North Dakota Century Code is amended and reenacted as follows:

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-19.1-30, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

**SECTION 14. AMENDMENT.** Section 10-19.1-44 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-44. Absent directors.** If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as a the vote of a director present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

**SECTION 15. AMENDMENT.** Section 10-19.1-46 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-46. Act of the board.** The board shall take action by the affirmative vote of the greater of a majority of the directors present at a duly held meeting at the time the action is taken, or a majority of the minimum proportion or number of directors that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

**SECTION 16. AMENDMENT.** Subsection 2 of section 10-19.1-51 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section:

- a. A director does not have a material financial interest in a resolution fixing the compensation of the a director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation is not void or voidable or

considered to be a contract or other transaction between a corporation and one or more of its directors for purposes of this section even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified, or even though other directors voting upon the resolution are also receiving compensation from the corporation; and

- b. A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and brothers and sisters of the spouse of the a director, or any combination of them have a material financial interest. A contract or other transaction between a corporation and the spouse, parents, children and spouses of children, brothers and sisters, spouses of brothers and sisters, and brothers and sisters of the spouse of a director, or any combination of them, is considered to be a transaction between the corporation and the director.

**SECTION 17. AMENDMENT.** Section 10-19.1-53 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-53. Duties of officers and agents.** ~~All officers and agents of the corporation, as between themselves and the corporation, have such authority and must perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board not inconsistent with the bylaws.~~

1. The president shall:

- a. Have general active management for the business of the corporation;
- b. When present, preside at all meetings of the board and of shareholders;
- c. See that all orders and resolutions of the board are carried into effect;
- d. Sign and deliver in the name of the corporation, any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some officer or agent of the corporation;
- e. Maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and
- f. Perform other duties prescribed by the board.

2. The treasurer shall:

- a. Keep accurate financial records for the corporation;

- b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
  - c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;
  - d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
  - e. Give to the president and the board, whenever requested, an account of all transactions by the treasurer and of the financial condition of the corporation; and
  - f. Perform other duties prescribed by the board or by the president.
3. All other officers and agents of the corporation, as between themselves and the corporation, have the authority and shall perform the duties in the management of the corporation as may be provided in the articles or bylaws, or as may be determined by resolution of the board not inconsistent with the articles and bylaws.

**SECTION 18. AMENDMENT.** Subsection 3 of section 10-19.1-61 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:
- a. May be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and
  - b. May incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office, a copy of the agreements, contracts, or other arrangements or portions incorporated by reference.

**SECTION 19. AMENDMENT.** Section 10-19.1-61.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-61.1. Share dividends, divisions, and combinations.**

1. A corporation may effect a share dividend or a division or combination of its shares as provided in this section. ~~As used in this section, the~~

terms "division" and "combination" mean dividing or combining shares of any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

2. Articles of amendment must be adopted by the board and the shareholders under sections 10-19.1-19 and 10-19.1-20 to effect a division or combination if, as a result of the proposed division or combination:
  - a. The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or
  - b. The percentage of authorized shares of any class or series remaining unissued after the division or combination will exceed the percentage of authorized shares of that class or series that were unissued before the division or combination.

~~For purposes of this subsection, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series or any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 10-19.1-68 must be disregarded.~~

3. If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 10-19.1-21.
4. Subject to the restrictions provided in subsections 2 and 3 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 10-19.1-19 and 10-19.1-20. In effecting a division or combination under this subsection, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.
5. If a division or combination that includes an amendment of the articles is effected under subsection 4, then articles of amendment must be prepared that contain the information required by section 10-19.1-21 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.
6. For purposes of this section, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series and any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 10-19.1-68 must be disregarded.

**SECTION 20. AMENDMENT.** Section 10-19.1-62 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-62. Subscriptions for shares.**

1. A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.
2. ~~★ Unless otherwise provided in the subscription agreement, or unless all of the subscribers and, if in existence, the corporation consents to a shorter or longer period, a subscription for shares is irrevocable for a period of six months; unless the subscription agreement provides for, or unless all of the subscribers consent to, an earlier revocation.~~
3. A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times, or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board, but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.
4. Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation; ~~or, if the amount due remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent subscriber, the board may declare a forfeiture of the subscription or cancel it in accordance with this subsection.~~
5. ~~Upon forfeiture of a subscription~~ If the amount due on a subscription for shares remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent subscriber, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. The excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale shall be paid. If the shares subscribed for are sold pursuant to this subsection, the corporation shall pay to the delinquent subscriber or to a the delinquent subscriber's legal representative the lesser of (a) the excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale; and (b) the amount actually paid by the delinquent subscriber. If the shares subscribed for are not sold pursuant to this subsection, the corporation may collect the amount due in the same manner as a debt due the corporation or cancel the subscription in accordance with subsection 6. The payment shall not exceed the amount actually paid by the delinquent subscriber.
6. ~~If, within twenty days after the corporation offers to sell the amount due on a subscription for shares remains unpaid for a period of twenty days~~

after written notice of demand for payment has been given to the delinquent subscriber and the shares subscribed for by the delinquent subscriber; no prospective purchaser offers to purchase the shares for a money price sufficient to pay the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale; or if the corporation has refunded to the subscriber or a legal representative a have not been sold pursuant to subsection 5, the corporation may cancel the subscription, in which event the shares subscribed for must be restored to the status of authorized but unissued shares, the corporation may retain the portion of the subscription price actually paid; the subscription may be canceled; the shares subscribed for may be restored to the status of authorized but unissued shares that does not exceed ten percent of the subscription price, and the corporation may retain the shall refund to the delinquent subscriber or the delinquent subscriber's legal representative that portion of the subscription price actually paid that does not exceed which exceeds ten percent of the subscription price.

**SECTION 21. AMENDMENT.** Subsections 4 and 9 of section 10-19.1-65 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. ~~A~~ Unless otherwise provided in the articles, a shareholder does not have a preemptive right pursuant to this section to acquire securities or rights to purchase securities that are:
  - a. Issued for a consideration other than money;
  - b. Issued pursuant to a plan of merger or exchange;
  - c. Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;
  - d. Issued upon exercise of previously issued rights to purchase securities of the corporation;
  - e. Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this subdivision, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by either state or federal securities laws; or
  - f. Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.
9. ~~No~~ If the shareholders of a corporation are entitled to cumulative voting in the election of directors, no amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

**SECTION 22. AMENDMENT.** Subsection 2 of section 10-19.1-68 of the North Dakota Century Code is amended and reenacted as follows:



2. A corporation may not pay money for fractional shares if that action would result in the cancellation of more than twenty percent of the outstanding shares of a class or series. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

**SECTION 23. AMENDMENT.** Section 10-19.1-73 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-73. Notice.**

1. Except as otherwise provided in this chapter, notice of all meetings of shareholders must be given to every holder of shares entitled to vote unless:
  - a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
  - b. The following have been mailed by first-class mail to a shareholder at the address in the corporate records and returned nondeliverable:
    - (1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or
    - (2) All payments of dividends, provided there were at least two sent during a twelve-month period.

An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

2. If notice of an adjourned meeting is required under subdivision a of subsection 1, then the date for determination of shares entitled to notice of and entitled to vote at the adjourned meeting must comply with subsection 1 of section 10-19.1-77, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.
3. If a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting.

- ~~3-~~ 4. The notice must contain the date, time, and place of the meeting, the information with respect to dissenters' rights required by subsection 2 of section 10-19.1-88, if applicable, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.
- ~~4-~~ 5. A shareholder may waive notice of a meeting of shareholders. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

**SECTION 24. AMENDMENT.** Subsection 3 of section 10-19.1-73.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 4 5 of section 10-19.1-73. Participation in a meeting by means of communications described in subsections 1 and 2 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

**SECTION 25. AMENDMENT.** Subsection 2 of section 10-19.1-74 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series as is required pursuant to subsection 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class or series, the minimum percentage of the number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 10-19.1-76.

**SECTION 26. AMENDMENT.** Subsections 2 and 3 of section 10-19.1-79 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Except as provided in subsection 3, shares of a corporation registered in the name of a subsidiary are not entitled to ~~vote~~ be voted on any matter.

3. Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to vote be voted on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation or, with respect to shares in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the shares.

**SECTION 27. AMENDMENT.** Subsection 1 of section 10-19.1-80 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegraph, cablegram, or other means of electronic transmission: However, provided the telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined corporation has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

**SECTION 28. AMENDMENT.** Subsection 4 of section 10-19.1-84 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the corporation shall make available within ten days after receipt by an officer of the corporation of the written demand:
  - a. The share register; and
  - b. All documents referred to in subsection 2.

**SECTION 29. AMENDMENT.** Section 10-19.1-85 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-85. Financial statements.**

1. A corporation shall; upon written request by a shareholder, furnish annual financial statements, including prepare annual financial statements within one hundred eighty days after the close of the

corporation's fiscal year. The financial statements shall include at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which must be prepared on the basis of accounting methods reasonable in the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the corporation's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

2. Upon written request by a shareholder, a corporation shall furnish its most recent annual financial statements as required under subsection 1 no later than ten business days after receipt of a shareholder's written request. "Furnish" for purposes of this subsection means that the corporation shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting shareholder.

**SECTION 30. AMENDMENT.** Subsections 1 and 3 of section 10-19.1-87 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
  - a. An amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
    - (1) Alters or abolishes a preferential right of the shares;
    - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
    - (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares; or
    - (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;
  - b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including a transaction permitted without shareholder approval in subsection 1 of section 10-19.1-104, or a disposition in dissolution described in subsection 2

of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

- c. A plan of merger to which the corporation is a party, except as provided in subsection 3;
  - d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to vote on the plan; or
  - e. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.
3. ~~The~~ Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of the surviving corporation in a merger if the shares of the shareholder are not entitled to be voted on the merger.

**SECTION 31. AMENDMENT.** Subsections 5 and 10 of section 10-19.1-88 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. In order to receive the fair value of shares, a dissenting shareholder must demand payment and deposit certificated shares within thirty days after the notice required by subsection 4 was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.
10. If the corporation receives a demand under subsection 9, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after a discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares plus interest. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subsection 9 and who have not reached agreement with the corporation. The corporation, after filing the petition, shall serve all parties with a summons and copy of the petition under the rules of civil procedure. The residents of this state may be served by registered mail or by publication as provided by law. Except as otherwise provided, the rules of civil procedure apply to the proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or other shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the

shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 6, 7, and 8, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subsections 6, 7, and 8 exceeds the fair value of the shares as determined by the court, plus interest.

**SECTION 32. AMENDMENT.** Subsection 1 of section 10-19.1-89 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist any person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:
  - a. Is in the usual and regular course of business of the corporation;
  - b. Is with, or for the benefit of, a related ~~corporation~~ organization, an organization in which the corporation has a financial interest, all organizations with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the corporation;
  - c. Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
  - d. Has Whether or not any separate consideration has been paid or promised to the corporation has been approved by:
    - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons; or
    - (2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

**SECTION 33. AMENDMENT.** Subsections 1 and 7 of section 10-19.1-91 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. For purposes of this section, the terms defined in this subsection have the meanings given them.

- a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
  - b. "Official capacity" means:
    - (1) With respect to a director, the position of director in a corporation;
    - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
    - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, or employee of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee, or employee, as the case may be, of the other organization or employee benefit plan.
  - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
  - d. "Special legal counsel" means counsel who has not represented the corporation or a related ~~corporation~~ organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.
7. All ~~indemnification~~ determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
- a. By the board by a majority of a quorum: ~~Directors, if the directors who are at the time parties to the proceeding shall are not be~~ counted for determining either a majority or the presence of a quorum;
  - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;
  - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee

cannot be established, by a majority of the full board including directors who are parties;

- d. If a determination is not made under subdivisions a, b, and c, by the shareholders, ~~excluding the votes of~~ but the shares held by parties to the proceeding may not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or
- e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:
  - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or after  
a
  - (2) A a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

**SECTION 34. AMENDMENT.** Subsections 1 and 4 of section 10-19.1-92 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subsection 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous; ~~and the~~
  - a. The corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.
  - b. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution ~~shall~~ must be measured in accordance with subsection 3.
  - c. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.
4. Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the



transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related ~~corporation~~ organization, or subject to any other agreement between the corporation and the shareholder.

**SECTION 35. AMENDMENT.** Subsection 1 of section 10-19.1-93 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may acquire its own shares, subject to section 10-19.1-92. ~~If the corporation pledges the shares to secure payment of the redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subsection until the pledge is released. Shares so acquired~~
  - a. If a corporation acquires its own shares, then any of the acquired shares that are not pledged by the corporation as security for the future payment of some or all of the purchase price for the shares constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued; in which case. If the articles prohibit reissue, the number of authorized shares is reduced by the number of shares acquired.
  - b. If a corporation pledges acquired shares as security for future payment of all or part of the purchase price for the shares and reissues the pledged shares in its own name, then:
    - (1) The shares must continue to be issued and outstanding except for voting and determination of a quorum, and the shares are not considered to be present and entitled to vote at any meeting of shareholders;
    - (2) The corporation may not vote or exercise any other rights of a shareholder with respect to the pledged shares, but the pledgee shall have any rights, other than the right to vote, with respect to the shares which the pledgee is entitled to contract;
    - (3) If the pledge is foreclosed, the corporation shall reissue and deliver the pledged shares to or at the direction of the pledgee; and
    - (4) Shares that are released from a pledge have the status specified in subdivision a of subsection 1.

**SECTION 36. AMENDMENT.** Subsection 1 of section 10-19.1-95 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other liabilities, a director who is present and votes for or fails to vote against, except a director who is prohibited by section 10-19.1-51 from voting on the distribution, or who consents in writing to, a distribution made in violation of subsection 1 or 5 of section 10-19.1-92 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct

provided in section 10-19.1-50, is liable to the corporation, its receiver or any other person winding up its affairs, jointly and severally with all other directors so liable and to other directors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-19.1-92.

**SECTION 37. AMENDMENT.** Subsections 3 and 4 of section 10-19.1-98 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger ~~or exchange~~ affects a cancellation of shares of the class or series if the plan of merger or exchange affects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 10-19.1-87 in the event of the merger ~~or exchange~~.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of shareholders of a surviving corporation is not required if:
  - a. The articles of the corporation will not be amended in the transaction;
  - b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;
  - c. The number of voting power of the outstanding shares of the corporation entitled to vote immediately after the merger or exchange, plus the number of voting power of the shares of the corporation entitled to vote issuable on conversion of ~~securities other than shares~~, or on the exercise of rights to purchase, securities issued ~~by virtue of the terms of in~~ the transaction, will not exceed by more than twenty percent the number of voting power of the outstanding shares of the corporation entitled to vote immediately before the transaction; and
  - d. The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion ~~of~~, or on the exercise of rights to purchase, securities issued in the merger, will not exceed by more than twenty percent the number of participating shares of the corporation immediately before the merger. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

**SECTION 38. AMENDMENT.** Subsection 6 of section 10-19.1-100 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. If all of the ~~stock~~ shares of one or more domestic subsidiaries ~~of the parent~~ that is a constituent party to a merger under this section ~~is are~~ not owned by the parent directly, or indirectly through related

corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenter's rights under section 10-19.1-87, without regard to subsection 3 of section 10-19.1-87 and section 10-19.1-88. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87, if the articles of incorporation of the surviving corporation constitute an amendment to the articles of the corporation of the parent, that shareholder of the parent has dissenter's rights as provided under sections 10-19.1-87 and 10-19.1-88. Except as provided in this subsection, sections 10-19.1-87 and 10-19.1-88 do not apply to any merger affected under this section.

**SECTION 39. AMENDMENT.** Subsection 1 of section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation, by affirmative vote of a majority of the directors present; ~~may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business;~~ upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, ~~in which case no and without shareholder approval is required, may:~~
  - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
  - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business;  
or
  - c. Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

**SECTION 40. AMENDMENT.** Section 10-19.1-106 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-106. Voluntary dissolution by incorporators.** A corporation that has not issued shares may be dissolved by the incorporators or directors in the manner set forth in this section:

1. A majority of the incorporators or directors shall sign articles of dissolution containing:
  - a. The name of the corporation;
  - b. The date of incorporation;
  - c. A statement that shares have not been issued;

- d. A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and
  - e. A statement that no debts remain unpaid.
2. The articles of dissolution must be filed with the secretary of state, together with the fees provided in chapter 10-23.
3. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.
4. The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:
  - a. The name of the corporation;
  - b. The date the articles of dissolution were filed with the secretary of state; and
  - c. A statement that the corporation is dissolved.

**SECTION 41. AMENDMENT.** Section 10-19.1-109 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-109. Procedure in dissolution.**

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:
  - a. To collect or make provisions for the collection of all known debts due or owing to the corporation, including unpaid subscriptions for shares;
  - b. Except as provided in sections ~~10-19.1-100~~ 10-19.1-110, 10-19.1-110.1, and 10-19.1-124, to pay or make provision for the payment of all known debts, obligations, and liabilities of the corporation according to their priorities; and
  - c. To give notice to creditors and claimants under section 10-19.1-110 or to proceed under section ~~10-19.1-100.1~~ 10-19.1-110.1.
2. Notwithstanding section 10-19.1-104, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.
3. All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the corporation must be distributed to the shareholders in accordance with subsection 4 of section 10-19.1-92.

**SECTION 42. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located and by giving written notice to known creditors and claimants pursuant to subsection ~~20~~ 21 of section 10-19.1-01.

**SECTION 43. AMENDMENT.** Section 10-19.1-115 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-115. Involuntary dissolution.**

1. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
  - a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
  - b. In an action by a shareholder when it is established that:
    - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;
    - (2) The directors or those in control of the corporation have acted fraudulently; or illegally; ~~or in a manner unfairly prejudicial~~ toward one or more shareholders in their capacities as shareholders; or directors; or as officers; or ~~as~~ employees of a closely held corporation;
    - (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;
    - (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
- ~~(4)~~ (5) The corporate assets are being misapplied or wasted; or

- (5) (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124.
- c. In an action by a creditor when:
- (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
  - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or
- d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.
2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.
3. In an action under subdivision b of subsection 1 involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.
- a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
- b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.
- c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.

- d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.
4. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.
- ~~4~~ 5. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.
- ~~5~~ 6. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.
- ~~6~~ 7. Proceedings under this section must be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

**SECTION 44. AMENDMENT.** Section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-129. Service of process on corporation and nonresident directors.**

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

2. A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent of the corporation, or upon an officer of the corporation, or upon the secretary of state as provided in this section.
3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in chapter 10-23. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section 10-19.1-02.2, service may be made according to subsection 2.
5. A record of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it must be maintained in the office of the secretary of state.
- ~~5~~ 6. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

<sup>46</sup> **SECTION 45. AMENDMENT.** Section 10-23-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-23-01. Annual report of domestic and foreign corporations.** Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by sections 10-23-02 and 10-23-03, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

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<sup>46</sup> Section 10-23-01 was also amended by section 2 of Senate Bill No. 2349, chapter 101.



2. The address of the registered office of the corporation in this state, the name of its registered agent in this state at that address, and the address of its principal office.
3. A brief statement of the character of the business in which the corporation is actually engaged in this state.
4. The names and respective addresses of the directors and officers of the corporation.
5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
6. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
7. A statement, expressed in dollars, of the amount of stated capital of the corporation. "Stated capital" means, at any particular time, the sum of the following:
  - a. The par value of all shares of the corporation having a par value, which have been issued.
  - b. The amount of the consideration received by the corporation for all shares of the corporation without par value, which have been issued, except such part of the consideration thereof as may have been allocated to capital surplus in a manner permitted by law.
  - c. Such amounts not included in subdivisions a and b as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation must be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23.
8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted must be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December.

9. ~~Such~~ Any additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by ~~such~~ the corporation.

Such annual report must be made on forms prescribed and furnished by the secretary of state, and the information therein contained must be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which must be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. It must be signed as prescribed in subsection ~~28~~ 35 of section 10-19.1-01 or, if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation. The secretary of state may destroy all the annual reports provided for in this section after they have been on file for six years.

<sup>47</sup> **SECTION 46. AMENDMENT.** Section 10-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-02. Definitions.** For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring organization" means the foreign or domestic limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.
2. "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which may not be a post-office box.
3. "Agreement to give transfer consent" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, under which the members agree in advance to give any consent referred to in subsection 2 of section 10-32-32.
4. "Articles" or "articles of organization" means:
  - a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, and articles of termination.
  - b. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.

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<sup>47</sup> Section 10-32-02 was also amended by section 26 of Senate Bill No. 2344, chapter 55.

5. "Board" or "board of governors" means the board of governors of a limited liability company.
6. "Board member" means:
  - a. An individual serving on the board of governors in the case of a limited liability company; and
  - b. An individual serving on the board of directors in the case of a corporation.
7. "Business continuation agreement" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, made after the limited liability company has incurred an event of dissolution, under which the members:
  - a. Agree that, despite any dissolution, winding up and termination of the limited liability company as a legal entity, its business will be continued in a successor organization through a merger, transfer of assets, transfer of membership interests, or otherwise; and
  - b. Specify the terms and conditions under which the business continuation will occur.
8. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.
9. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
10. "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.
11. "Contribution agreement" means an agreement between a person and a limited liability company under which:
  - a. The person agrees to make a contribution in the future; and
  - b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
12. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
  - a. The person has the right, but not the obligation, to make a contribution in the future; and
  - b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

13. "Dissolution" means that the limited liability company has incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up its affairs and to terminate its existence as a legal entity.
14. "Dissolution avoidance consent" means the consent of all remaining members:
  - a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and
  - b. That the limited liability company must be continued as a legal entity without dissolution.
15. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.
16. "Domestic corporation" means a corporation other than a foreign corporation organized for profit and incorporated under or governed by chapter 10-19.1.
17. "Filed with the secretary of state" means that a signed original of a document together with the fees provided in section 10-32-150, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, and record the document in the office of the secretary of state.
- ~~17~~ 18. "Financial rights" means a member's rights:
  - a. To share in profits and losses as provided in section 10-32-36;
  - b. To share in distributions as provided in section 10-32-60;
  - c. To receive interim distributions as provided in section 10-32-61; and
  - d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.
19. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under chapter 10-19.1.
- ~~18~~ 20. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter.

- ~~19~~ 21. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
- ~~20~~ 22. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.
- ~~21~~ 23. **"Governing board" means:**
- a. The board of governors in the case of a limited liability company; and
  - b. The board of directors in the case of a corporation.
- ~~22~~ 24. "Governor" means an individual serving on the board of governors.
- ~~23~~ 25. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
- ~~24~~ 26. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
- ~~25~~ 27. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.
- ~~26~~ 28. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.
- ~~27~~ 29. "Manager" means a person elected, appointed, or otherwise designated as a manager by the board of governors, and any other person considered elected as a manager pursuant to section 10-32-92.
- ~~28~~ 30. "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company.
- ~~29~~ 31. "Membership interest" means a member's interest in a limited liability company consisting of a member's financial rights, a member's right to assign financial rights as provided in section 10-32-31, a member's governance rights, and a member's right to assign governance rights as provided in section 10-32-32.
- ~~30~~ 32. "Notice" is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company when in writing and mailed or delivered to the limited liability company

or the manager at the registered office or principal executive office of the limited liability company.

- a. In all other cases, notice is given to a person:
  - (1) When mailed to the person at an address designated by the person or at the last known address of the person;
  - (2) When handed to the person; or
  - (3) When left at the office of the person with a clerk or other person in charge of the office; or
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion who is residing there.
- b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.
- c. Notice is considered received when it is given.

~~31+~~ 33. "Operating agreement" means rules, resolutions, or other provisions that:

- a. Relate to the management of the business or the regulation of the affairs of the limited liability company; and
- b. Have been made expressly part of the operating agreement by the action, taken from time to time under section 10-32-69, by the board of governors or the members.

~~32+~~ 34. "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

~~33+~~ 35. "Owners" means:

- a. Members in the case of a limited liability company; and
- b. Shareholders in the case of a corporation.

~~34+~~ 36. "Ownership interests" means:

- a. Membership interests in the case of a limited liability company; and
- b. Shares in the case of a corporation.

~~35+~~ 37. "Parent" of a specified limited liability company means a limited liability company or corporation that directly; or indirectly ~~through related limited liability companies or corporations~~, owns more than fifty percent

of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

~~36+~~ **37.** "Person" includes an individual and an organization.

~~37+~~ **38.** "Pertains" means a contribution "pertains":

- a. To a particular series when the contribution is made in return for a membership interest in that particular series.
- b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.

A contribution that pertains to a series does not pertain to the class of which the series is a part.

~~38+~~ **39.** "Principal executive office" means an office where the elected or appointed president of the limited liability company has an office. If the limited liability company has no elected or appointed president, "principal executive office" means the registered office of the limited liability company.

~~39+~~ **40.** "Registered office" means the place in this state designated in the articles of organization as the registered office of the limited liability company.

~~40+~~ **41.** "~~Related limited liability company~~ organization" of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company.

~~41+~~ **42.** "Required records" are those records required to be maintained under section 10-32-51.

~~42+~~ **43.** "Security" has the meaning given it in subsection 13 of section 10-04-02.

~~43+~~ **44.** "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

~~44+~~ **45.** "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization or operating agreement or a resolution approved by the affirmative vote of the required proportion or number of governors or the required proportion of the voting power of membership interests present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

~~45+~~ **46.** "Subsidiary" of a specified limited liability company means:

- a. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly; or indirectly ~~through related limited liability companies or corporations~~; by the specified limited liability company; or
  - b. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly; or indirectly ~~through related limited liability companies or corporations~~; by the specified limited liability company.
- ~~46+~~ 47. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.
- ~~47+~~ 48. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.
- ~~48+~~ 49. "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is:
- a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or
  - b. Is considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.
- ~~49+~~ 50. "Vote" includes authorization by written action.
- ~~50+~~ 51. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on its business, except to the extent necessary for concluding its affairs, and disposes of its assets under section 10-32-131.
- ~~51+~~ 52. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

**SECTION 47. AMENDMENT.** Subsections 1 and 2 of section 10-32-07 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The articles of organization must contain:
  - a. The name of the limited liability company;
  - b. The address of the principal executive office;
  - c. The address of the registered office of the limited liability company and the name of its registered agent at that address;



- d. The name and address of each organizer;
  - e. ~~The A statement stating in years that the~~ limited period of existence for the limited liability company; ~~which~~ must be a period of thirty years or less from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a longer period of duration;
  - f. A statement as to whether upon the occurrence of any event under subdivision e of subsection 1 of section 10-32-109 that terminates the continued membership of a member in the limited liability company, the remaining members will have the power to avoid dissolution by giving dissolution avoidance consent; and
  - g. A statement as to whether the members have the power to enter into a business continuation agreement.
2. The following provisions govern a limited liability company unless modified in the articles of organization:
- a. A limited liability company has general business purposes (section 10-32-04);
  - b. A limited liability company has certain powers (section 10-32-23);
  - c. The power to adopt, amend, or repeal the operating agreement is vested in the board of governors (section 10-32-68);
  - d. A limited liability company must allow cumulative voting for governors (section 10-32-76);
  - e. The affirmative vote of a majority of governors present is required for an action of the board of governors (section 10-32-83);
  - f. A written action by the board of governors taken without a meeting must be signed by all governors (section 10-32-84);
  - g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements (subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59);
  - h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series (subdivisions a and b of subsection 5 of section 10-32-56);
  - i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (subdivision b of subsection 5 of section 10-32-56);
  - j. The restatement of value of previous contributions is to be determined according to a specified process (subsections 3 and 4 of section 10-32-57);
  - k. A member has certain preemptive rights, unless otherwise provided by the board of governors (section 10-32-37);

- l. The affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote (subsection 1 of section 10-32-43);
- m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 10-32-45);
- n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 10-32-60);
- o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members (section 10-32-36);
- p. A written action by the members taken without a meeting must be signed by all members (section 10-32-43);
- q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind (section 10-32-62); ~~and~~
- r. A member is not subject to expulsion (subsection 2 of section 10-32-30);
- s. Unanimous consent is required for the transfer of governance rights to a person not already a member (subsection 2 of section 10-32-32); and
- t. Unanimous consent is required to avoid dissolution (subdivision e of subsection 1 of section 10-32-109).

**SECTION 48. AMENDMENT.** Subdivision b of subsection 1 of section 10-32-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or; ~~in the case of an organization formed pursuant to chapter 10-31; must contain the words "professional limited liability company", or the abbreviation "P.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter~~ including real estate matters, contracts, and filings with the secretary of state;

**SECTION 49. AMENDMENT.** Subsections 5, 7, 12, 14, and 21 of section 10-32-23 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. A limited liability company may sell, convey, mortgage, create a security interest in, encumber, assign, lease, exchange, transfer, or otherwise

dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.

7. A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or creation of a security interest in or other encumbrance or assignment of all or any of its property, franchises, and income.
12. A limited liability company may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related ~~limited liability companies'~~ organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of any or all of its members, managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.
21. A limited liability company may make advances ~~to its governors, managers, and employees and those of its subsidiaries~~ as provided in section 10-32-98.

**SECTION 50. AMENDMENT.** Section 10-32-28 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-28. Nature of a membership interest and statement of interest owned.**

1. A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.
2. At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement. The statement must describe the member's right to vote, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under subsection 3 of section 10-32-31 or governance rights under subsection 6 of section 10-32-32, then in effect, as well as any assignment of the member's rights then in effect other than a security interest. The statement is not a certificated security, is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.
3. For Notwithstanding any other provision of law, for the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each a general intangible, as defined in

section 41-09-06, and not a certificated security and not as defined in subdivision a of subsection 1 of section 41-08-02, an uncertificated security as defined in subdivision b of subsection 1 of section 41-08-02, chattel paper as defined in subdivision b of subsection 1 of section 41-09-05, an instrument as defined in subdivision i of subsection 1 of section 41-09-05, or an account as defined in section 41-09-06.

**SECTION 51. AMENDMENT.** Section 10-32-30 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-30. Termination of a membership interest.**

1. A member always has the power, though not necessarily the right, to terminate its membership by resigning or retiring at any time. A member's resignation or retirement, whether rightful or wrongful, causes dissolution under subdivision e of subsection 1 of section 10-32-109 unless dissolution ~~avoidance consent is obtained from the remaining members~~ is avoided under that subdivision. A member has no power to transfer all or part of the member's membership interest, except as provided in sections 10-32-31 and 10-32-32.
2. Unless otherwise provided in the articles of organization, a member may not be expelled.
3. If for any reason the continued membership of a member is terminated and:
  - a. If dissolution under subdivision e of subsection 1 of section 10-32-109 is avoided ~~through dissolution avoidance consent under that subdivision~~, then the member whose membership has ~~terminated~~ loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; or
  - b. If dissolution under subdivision e of subsection 1 of section 10-32-109 is not avoided ~~through dissolution avoidance consent under that subdivision~~, the member whose continued membership has ~~terminated~~ retains all governance rights ~~and financial rights~~ owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.
4. If a member resigns or retires in contravention of the articles of organization or a member-control agreement, then:
  - a. ~~The If dissolution avoidance consent is obtained, the member who has wrongfully resigned or retired is liable to all of the other members and to the limited liability company to the extent damaged by the wrongful resignation or retirement; and~~
  - b. If dissolution avoidance consent is not obtained ~~but the business of the limited liability company is continued under a business continuation agreement; then unless otherwise provided in the business continuation agreement:~~

- (1) The member who has wrongfully resigned or retired has the right as against the successor organization to have the value of the resigned or retired membership interest determined and paid in cash; but
- (2) In ascertaining the value of the resigned or retired membership interest, the value of the goodwill of the business must not be considered section 10-32-131 applies.

**SECTION 52. AMENDMENT.** Section 10-32-31 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-31. Assignment of financial rights.**

1. Except as provided in subsection 3, a member's financial rights are transferable in whole or in part.
2. An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution. The assignment may not allow the assignee to control the member's exercise of governance rights.
3. A restriction on the assignment of financial rights may be imposed in the articles, in the operating agreement, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.
4. ★ Subject to subsection 5, a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.
5. With regard to restrictions on the assignment of financial rights, a would be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 10-32-28. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.
6. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement,

resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with title 41 without the consent or approval of a member whose financial rights are subject to the security interest.

**SECTION 53. AMENDMENT.** Section 10-32-32 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-32. Assignment of a complete membership interest and of governance rights coupled with an assignment of financial rights.**

1. ~~A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with a simultaneous assignment to the same assignee of all the member's financial rights.~~ A member's governance rights are assignable, in whole or in part, only as provided in this section.
2. Subject to subsection 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent, unless the articles of organization provide for written consent by fewer than all members. Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subsection. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subsection. If a secured party has a security interest in both a member's financial rights and governance rights, including a security interest in a complete membership interest, this subsection's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.
3. When an assignment of governance rights ~~coupled with financial rights~~ is effective under subsection 2:
  - a. ~~The~~ If the assignment is not a security interest, the assignee becomes a member, if not already a member; and
  - b. If the assignor does not retain any governance rights, the assignor ceases to be a member, and the ~~unanimous~~ written consent required under subsection 2, also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under subdivision e of subsection 1 of section 10-32-109 on account of the assignor ceasing to be a member if the consent required to avoid dissolution is not greater than the consent required under subsection 2.
4. When an assignment other than a security interest is effective under subsection 2, unless the written consent under subsection 2 otherwise provides:

- a. The assignee is liable for any in proportion to the interest assigned for the obligations of the assignor under section 10-32-56, including liability for unperformed promises that have been reflected as contributions in the required records, and section 10-32-65 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and
  - b. The assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 10-32-56 and 10-32-65.
5. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subsection 2:
- a. The purported or attempted assignment is ineffective in its entirety; and
  - b. Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.
6. Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in subsections 3 and 4 of section 10-32-31 for restricting the transfer of financial rights.
7. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with title 41, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

**SECTION 54. AMENDMENT.** Section 10-32-33 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-33. Effective date of assignments.** Any permissible assignment of financial rights under section 10-32-31 ~~and or~~ of governance rights ~~coupled with financial rights or a complete membership interest~~ under section 10-32-32 will be effective as to and binding on the limited liability company only when the assignee's name, address, and the nature and extent of the assignment are reflected in the required records of the limited liability company, except that a permissible and otherwise valid security interest in a complete membership interest, financial rights, or governance rights will be effective as to and binding on the limited liability company as provided in title 41 whether or not the information about the secured party or the permissible and otherwise valid security interest is reflected in the required records of the limited liability company.

**SECTION 55. AMENDMENT.** Subsection 2 of section 10-32-35 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If an event referred to in subsection 1 causes the termination of a member's membership interest and ~~the remaining members give dissolution avoidance consent~~ is avoided under subdivision e of subsection 1 of section 10-32-109, then:
  - a. As provided in subsection 3 of section 10-32-30, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and
  - b. The rights to be exercised by the legal representative of the terminated member will be limited accordingly.

**SECTION 56. AMENDMENT.** Subdivision d of subsection 1 of section 10-32-50 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. A member-control agreement may include a business continuation agreement only if the articles of organization grant the members the power to enter into business continuation agreements and only if entered into after the limited liability company has incurred an event of dissolution.

**SECTION 57. AMENDMENT.** Subdivision b of subsection 1 of section 10-32-51 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party and a description of the rights assigned;

**SECTION 58. AMENDMENT.** Subsection 4 of section 10-32-64 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related ~~limited liability company~~ organization, or subject to any other agreement between the limited liability company and the member.

**SECTION 59. AMENDMENT.** Section 10-32-88 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-88. Managers.** ~~The managers of a~~ A limited liability company must consist of ~~a president, one or more individuals exercising the functions of the offices, however designated, of president and treasurer and may have one or more vice presidents as may be prescribed in the operating agreement; and a secretary, and a treasurer; each of whom must be elected by the board at such time and in such manner as may be provided in the operating agreement.~~

**SECTION 60. AMENDMENT.** Section 10-32-89 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:



10-32-89. Duties of managers and agents. All managers and agents of the limited liability company, as between themselves and the limited liability company, have such authority and must perform such duties in the management of the limited liability company as may be provided in the operating agreement, or as may be determined by resolution of the board not inconsistent with the operating agreement.

1. Unless the articles of organization or the operating agreement provides otherwise, the president shall:
  - a. Have general active management for the business of the limited liability company;
  - b. When present, preside at all meetings of the board of governors and of the members;
  - c. See that all orders and resolutions of the board of governors are carried into effect;
  - d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or operating agreement or the board of governors to some other manager or agent of the limited liability company;
  - e. Maintain records of and, whenever necessary, certify all proceedings of the board of governors and members; and
  - f. Perform other duties prescribed by the board of governors.
2. Unless the articles of organization or the operating agreement provides otherwise, the treasurer shall:
  - a. Keep accurate financial records for the limited liability company;
  - b. Deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;
  - c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;
  - d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;
  - e. Give to the president and the board of governors, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
  - f. Perform other duties prescribed by the board of governors or by the president.

3. Any other managers and agents of the limited liability company, as between themselves and the limited liability company, have the authority and shall perform the duties in the management of the limited liability company as may be provided in the articles of organization or the operating agreement, or as may be determined by resolution of the board not inconsistent with the articles of organization or the operating agreement.

**SECTION 61. AMENDMENT.** Subsection 1 of section 10-32-97 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:
  - a. Is in the usual and regular course of business of the limited liability company;
  - b. Is with, or for the benefit of, a related ~~limited liability company~~ organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations;
  - c. Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or
  - d. Has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.

**SECTION 62. AMENDMENT.** Section 10-32-98 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-98. Advances.** A limited liability company may, without a vote of the governors or its members, advance money to its members who provide services, governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

**SECTION 63. AMENDMENT.** Subsection 1 of section 10-32-99 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
  - a. "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability

company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

b. "Official capacity" means:

- (1) With respect to a governor, the position of governor in a limited liability company;
- (2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of governors, the employment relationship undertaken by an employee, ~~or~~ agent of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company; and
- (3) With respect to a governor, manager, member, employee, or agent of the limited liability company who, while a governor, manager, member, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

- c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.
- d. "Special legal counsel" means counsel who has not represented the limited liability company or a related ~~limited liability company~~ organization, or a governor, manager, member of a committee of the board of governors, employee, or agent whose indemnification is in issue.

**SECTION 64. AMENDMENT.** Subsections 1 and 3 of section 10-32-108 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a mortgage of or security interest in and otherwise encumber and assign for purposes of security all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, in which case no member approval is required.

3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or authorized agents, or, if the limited liability company no longer exists, by its last managers.

**SECTION 65. AMENDMENT.** Section 10-32-109 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-109. Methods of dissolution.**

1. A limited liability company dissolves upon the occurrence of any of the following events:
  - a. When the period fixed in the articles of organization for the duration of the limited liability company expires;
  - b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
  - c. By action of the organizers pursuant to section 10-32-110;
  - d. By action of the members pursuant to section 10-32-111; or
  - e. Upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:
    - (1) Death of any member;
    - (2) Retirement of any member;
    - (3) Resignation of any member;
    - (4) Redemption of a member's complete membership interest;
    - (5) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
    - (6) A buyout of a member's membership interest under section 10-32-119 that leaves that member with no governance rights;
    - (7) Expulsion of any member;
    - (8) Bankruptcy of any member;
    - (9) Dissolution of any member;
    - (10) A merger in which the limited liability company is not the surviving organization;
    - (11) An exchange in which the limited liability company is not the acquiring organization; or
    - (12) The occurrence of any other event that terminates the continued membership of a member in the limited liability company;

However, but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if either:

- (a) Either there are at least two remaining members or a new member is admitted as provided in section 10-32-06; and ~~the~~
  - (b) The existence and business of the limited liability company is continued either by the consent of all remaining members under a right to ~~do so~~ consent stated in the articles of organization and the consent is obtained no later than ninety days after the termination of the continued membership, or under a separate right to continue stated in the articles of organization.
2. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:
  - a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of its limited period of duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;
  - b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;
  - c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;
  - d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and
  - e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.
3. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights, or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with title 41.

**SECTION 66. AMENDMENT.** Subsection 1 of section 10-32-112 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If dissolution of the limited liability company is approved pursuant to subsection 2 of section 10-32-111, or it occurs under subdivision a or e of subsection 1 of section 10-32-109, the limited liability company shall file with the secretary of state, together with the fees provided in section 10-32-150, a notice of dissolution. The notice must contain:
  - a. The name of the limited liability company; and
  - b. If the dissolution:
    - (1) Is approved pursuant to subsection 2 of section 10-32-111, the date and place of the meeting at which the dissolution was approved and a statement that the requisite vote of the members was received, or that members validly took action without a meeting; and
    - (2) Occurs under subdivision a of subsection 1 of section 10-32-109 by the expiration of the limited liability company's duration, a statement of the expiration date; or
    - (3) Occurs under subdivision e of subsection 1 of section 10-32-109 by the termination of a membership interest of a member, a statement that the continued membership of a member has terminated and the date of that termination.

**SECTION 67. AMENDMENT.** Subsection 1 of section 10-32-114 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When a notice of dissolution has been filed with the secretary of state, and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112, then the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection ~~31~~ 32 of section 10-32-02.

**SECTION 68. AMENDMENT.** Section 10-32-131 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-131. Disposition of assets upon dissolution.**

1. ~~Except~~ Subject to subsection 4, ~~except~~ when the business of a dissolved limited liability company is being continued under subsection 2 or when the dissolved limited liability company is being wound up and terminated under subsection 3 of section 10-32-112, the assets of the dissolved

limited liability company must be disposed of to satisfy liabilities according to the following priorities:

- a. To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 10-32-61 or termination distributions under section 10-32-60;
- b. Unless otherwise provided in the articles of organization, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61; and
- c. Unless otherwise provided in the articles of organization, to members first for a return of their contributions, as restated from time to time under section 10-32-57, and secondly respecting their membership interests in the proportions in which the members share in distributions.

~~A limited liability company may offset any amount due a member under this subsection by any amount owed to the limited liability company by the member and by the amount of damages, if any, suffered by the limited liability company as a result of that member's breach of a member-control agreement.~~

2. If a business continuation agreement exists, then after dissolution the board of governors shall resolve to implement the business continuation agreement and the assets of the dissolved limited liability company must be disposed of according to that agreement, except:
  - a. Members and former members have dissenters' rights as provided in sections 10-32-54 and 10-32-55, but:
    - (1) No dissenters' rights exist if the business of the dissolved limited liability company is being continued pursuant to a business continuation agreement made after the dissolution; and
    - (2) Any dissenters' rights that do exist are limited by ~~subsection~~ subsections 3 and 4.
  - b. If the business of the dissolved limited liability company is being continued, but not through a merger under subsection 3 of section 10-32-112, the dissolved limited liability company shall comply with either section 10-32-114 or 10-32-115.
3. If a person has agreed in a business continuation agreement to waive dissenters' rights and nonetheless asserts dissenters' rights under subsection 2:
  - a. Those rights must be honored; but
  - b. Unless the business continuation agreement provides otherwise, including providing for installment payments:

- (1) In determining the fair value of the membership interest, the value of the goodwill of the business of the dissolved limited liability company must not be considered; and
- (2) The payment due the dissenter is subject to an offset equal to:
  - (a) Any amount owed to the limited liability company by the member;
  - (b) The amount of damages, if any, suffered by the limited liability company as a result of the dissenter's breach of the business continuation agreement; and
  - (c) The amount of other damages, if any, suffered by the limited liability company as a result of any breach by the dissenter of any other member-control agreement or part of a member-control agreement provided for in subsection 4.
4. A member who wrongfully resigns or retires is liable to the limited liability company for any damages caused by the member's wrongful resignation or retirement. Any member who breaches a member-control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments to dissenters due to winding up merger under subsection 3 of section 10-32-112, is subject to offset of these damages.

**SECTION 69. AMENDMENT.** Section 10-32-136 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-136. Name.** A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization. A trade name must be registered as provided in chapter 47-25 when applying for the certificate of authority under a name other than the name as authorized in the jurisdiction of origin.

**SECTION 70. AMENDMENT.** Subsection 1 of section 10-32-138 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign limited liability company is organized and an application executed by an authorized person and setting forth:
  - a. The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
  - b. The jurisdiction of its organization;
  - c. The name and business address of the proposed registered agent in this state, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state; ~~and~~



- d. The address of the principal executive office of the foreign limited liability company; and
- e. The date the foreign limited liability company expires in the jurisdiction of its organization.

**SECTION 71. AMENDMENT.** Section 10-32-140 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-140. Amendments to the certificate of authority.** If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, including but not limited to a change in the name or address of the registered agent required to be maintained by section 10-32-141, the foreign limited liability company shall promptly file with the secretary of state an amendment to the certificate of authority, executed by an authorized person correcting the statement application for an amended certificate of authority executed by an authorized person correcting the statement and in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized. In the case of a termination or merger, a foreign limited liability company that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.

**SECTION 72. AMENDMENT.** Section 10-32-143 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-143. Certificate of withdrawal.**

- 1. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-32-150, which must set forth:
  - 1+ a. The name of the limited liability company and the state or country under the laws of which it is organized;
  - 2+ b. That the limited liability company is not transacting business in this state;
  - 3+ c. That the limited liability company surrenders its authority to transact business in this state;
  - 4+ d. That the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the limited liability company by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state; and

- 5- e. A post-office address to which a person may mail a copy of any process against the limited liability company.
2. The filing with the secretary of state of a certificate of termination, or a certificate of merger if the limited liability company is not the surviving organization, from the proper officer of the state or country under the laws of which the limited liability company is organized constitutes a valid application of withdrawal and the authority of the limited liability company to transact business in this state shall cease upon filing of the certificate.

**SECTION 73. AMENDMENT.** Subsection 2 of section 10-32-144 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. No certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the its principal executive office required to be maintained pursuant to section 10-32-12; and
  - b. During the sixty-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

**SECTION 74. AMENDMENT.** Subsections 1, 2, and 3 of section 10-32-149 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:
  - a. The name of the limited liability company and the state or country under the laws of which it is organized.
  - b. The address of the registered office of the limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the business in which the limited liability company is actually engaged in this state.
  - d. The names and respective addresses of the managers and governors of the limited liability company or the names and respective addresses of at least two members of the limited liability company.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection 45 ~~46~~ of section 10-32-02, or if the limited liability company is in the hands of a receiver or trustee, it must be

signed on behalf of the limited liability company by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

3. The annual report of a limited liability company or foreign limited liability company must be ~~received by~~ delivered to the secretary of state ~~on or before November fifteenth~~ sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be ~~received on or delivered before November fifteenth~~ sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, or an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, is in compliance with this requirement. The secretary of state must file the report if the report conforms to the requirements of subsection 2. If the report does not conform, it must be returned to the limited liability company for any necessary corrections. If the report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply, if a report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is ~~received on or delivered before November fifteenth~~ sixteenth.

**SECTION 75. AMENDMENT.** Subsection 3 of section 40-57.1-04.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If the project operator is a corporation or a limited liability company, any of its officers, governors, or managers charged with the responsibility for making either property, income, sales, or use tax returns and payments are subject to the provisions of subsections 1 and 2 with respect to all state or local tax liens of record for property, income, sales, or use taxes for which the individual is personally liable. If the project operator is a partnership, each general partner is subject to the provisions of subsections 1 and 2 with respect to all state or local tax liens of record for property, income, sales, or use taxes for which the individual is personally liable.

**SECTION 76. AMENDMENT.** Section 57-38-60.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-60.2. Governor and manager liability.** If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the governor or manager, jointly or severally, charged with the responsibility of the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

**SECTION 77. AMENDMENT.** Section 57-39.2-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-18.1. Corporate officer and limited liability company governor or manager liability.** If a corporation or limited liability company holding a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers, governors, or managers having control, or supervision of, or charged with the responsibility for making such returns and payments shall be personally liable for such failure. The dissolution of a corporation or limited liability company shall not discharge an officer's, governor's, or manager's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

**SECTION 78. AMENDMENT.** Section 57-43.1-17.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-17.3. Governor and manager liability.** If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

**SECTION 79. AMENDMENT.** Section 57-43.2-16.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-16.2. Governor and manager liability.** If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

<sup>48</sup> **SECTION 80. REPEAL.** Section 1-01-28 of the North Dakota Century Code is repealed.

**SECTION 81. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 11, 1995  
Filed April 12, 1995

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<sup>48</sup> Section 1-01-28 was also repealed by section 30 of Senate Bill No. 2344, chapter 55.

**CHAPTER 104****HOUSE BILL NO. 1319**

(Representatives Wardner, Olson)

(Senator Goetz)

**ARTICLES OF INCORPORATION CONTENTS**

AN ACT to amend and reenact subsection 1 of section 10-19.1-10 and section 10-19.1-12 of the North Dakota Century Code, relating to the contents of articles of incorporation and the effective date of incorporation.

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

<sup>49</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 10-19.1-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The articles of incorporation must contain:
  - a. The name of the corporation.
  - b. The address of the registered office of the corporation and the name of its registered agent, at that address.
  - c. The aggregate number of shares that the corporation has authority to issue.
  - d. The name and address of each incorporator.
  - e. The effective date of the corporation if a later date than that on which the certificate of incorporation is issued by the secretary of state. A later effective date may not be later than ninety days after the date on which the certificate of incorporation is issued.

**SECTION 2. AMENDMENT.** Section 10-19.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-12. Effective date of incorporation.** The corporate existence begins upon the issuance of the certificate of incorporation or at a later date as specified in the articles of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent and required to be performed by the incorporators have been performed and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

Approved March 6, 1995  
Filed March 6, 1995

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<sup>49</sup> Section 10-19.1-10 was also amended by section 5 of Senate Bill No. 2343, chapter 103.

**CHAPTER 105****HOUSE BILL NO. 1332**

(Representative Froseth)

**NONPROFIT CORPORATION ANNUAL REPORTS**

AN ACT to create and enact a new section to chapter 10-28 of the North Dakota Century Code, relating to annual reports for nonprofit corporations; to amend and reenact sections 10-24-09, 10-27-09, and subsection 15 of section 10-28-01 of the North Dakota Century Code, relating to registered agents of North Dakota nonprofit corporations and change of fees paid by nonprofit corporations for annual reports; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 10-24-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-24-09. Change or establishment of registered office or registered agent.** A corporation may change or establish its registered office or registered agent upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. If the address of its registered office is to be changed or established, the address to which the registered office is to be changed or established.
3. If its registered agent is to be changed or established, the name of its successor or established registered agent.
4. That the address of its registered office and the address of the office of its registered agent, as changed or established will be identical.
5. That the change or establishment was authorized by resolution duly adopted by its board of directors.

The statement must be executed by an officer of the corporation and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed or established. If the secretary of state finds that the statement conforms to the provisions of chapters 10-24 through 10-28, the secretary of state shall file the statement and upon such filing the change or establishment of address of the registered office or the appointment of a new registered agent becomes effective.

The fee prescribed in chapter 10-28 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

Any registered agent of a corporation may resign as agent upon filing a written notice with the secretary of state, who shall forthwith mail a copy to the corporation at the last known address. The appointment of the agent shall terminate thirty days after receipt of the notice by the secretary of state.

**SECTION 2. AMENDMENT.** Section 10-27-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-27-09. Change or establishment of registered office or registered agent of foreign corporation.** A foreign corporation authorized to conduct affairs in this state may change or establish its registered office or its registered agent upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. If the address of its registered office is to be changed or established, the address to which the registered office is to be changed or established.
3. If its registered agent is to be changed or established, the name of its successor or established registered agent.
4. That the address of its registered office and the address of the office of its registered agent, as changed or established, will be identical.
5. That the change or establishment was authorized by resolution duly adopted by its board of directors.

The statement must be executed by an officer of the corporation and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed or established. If the secretary of state finds that the statement conforms to the provisions of this chapter, the secretary of state shall file the statement and upon filing the change or establishment of address of the registered office or the appointment of a new registered agent becomes effective.

The fee prescribed in chapter 10-28 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

Any registered agent in this state appointed by a foreign corporation may resign by filing a written notice with the secretary of state who shall forthwith mail a copy to the foreign corporation at its principal office. The appointment of the registered agent shall terminate thirty days after receipt of the notice by the secretary of state.

**SECTION 3. AMENDMENT.** Subsection 15 of section 10-28-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. Filing any other statement or annual report of a domestic or foreign corporation, twenty ten dollars.

**SECTION 4.** A new section to chapter 10-28 of the North Dakota Century Code is created and enacted as follows:

10-28-02.1. Annual report of nonprofit corporation and foreign nonprofit corporation - Involuntary dissolution - Revocation.

1. Each nonprofit corporation and each foreign nonprofit corporation authorized to conduct affairs in this state shall file, within the time prescribed by subsection 3, an annual report setting forth:

- a. The name of the nonprofit corporation or foreign nonprofit corporation and the state or country under the laws of which it is organized.
  - b. The address of the registered office of the nonprofit corporation or foreign nonprofit corporation in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement describing the purpose that the nonprofit corporation or foreign nonprofit corporation actually pursues in this state.
  - d. The names and addresses of the officers and directors of the nonprofit corporation or foreign nonprofit corporation.
  - e. The federal tax code by which its tax exemption is recognized, if any.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed by a person authorized to do so by chapters 10-24 through 10-28, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or members entitled to vote. If the nonprofit corporation or foreign nonprofit corporation is in the hands of a receiver or trustee, it must be signed by the receiver or trustee on behalf of the nonprofit corporation or foreign nonprofit corporation. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
3. The annual report must be delivered to the secretary of state on or before February first of each year, except that the first annual report of a nonprofit corporation or foreign nonprofit corporation must be delivered to the secretary of state on or before February first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state. An annual report in a sealed envelope postmarked by the United States postal service on or before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before February first, must be deemed compliance with this requirement. The secretary of state must file the report if the report conforms to the requirements of subsection 2. If the report does not conform, it must be returned to the nonprofit corporation or foreign nonprofit corporation for any necessary corrections. If the report is filed before the deadlines prescribed in this subsection, penalties for failure to file a report within the time provided do not apply if a report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction. The secretary of state may extend the annual filing date of any nonprofit corporation or foreign nonprofit corporation if a written application for an extension is received on or before February first.
4. Each nonprofit corporation or foreign nonprofit corporation that fails or refuses to file its annual report for any year within the time prescribed by



subsection 3 must pay an additional fee of five dollars. A nonprofit corporation that fails to file its annual report, along with the statutory filing and penalty fees, within one year after February first, ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall revoke the certificate of authority to conduct affairs of any foreign nonprofit corporation that fails to file its annual report, along with the statutory filing and penalty fees within one year after February first. The secretary of state's determination that a certificate of authority must be revoked under this section is final.

5. After the date established under subsection 3, the secretary of state shall notify any nonprofit corporation or foreign nonprofit corporation failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsection 4. The secretary of state shall mail the notice to the last registered agent at the last registered office of record. If the nonprofit corporation or foreign nonprofit corporation files its annual report after the notice is mailed, together with the annual report filing fee as prescribed by section 10-28-01 and the late filing penalty fee as prescribed by subsection 4, the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
6. A nonprofit corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3, ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall note the dissolution of the nonprofit corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved nonprofit corporation. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.
7. A foreign nonprofit corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3, forfeits its authority to conduct affairs in North Dakota. The secretary of state shall note the revocation of the foreign nonprofit corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign nonprofit corporation. Notice by the secretary of state must be mailed to the foreign nonprofit corporation's last registered agent at the last registered office of record.
8. A nonprofit corporation that was dissolved for failure to file an annual report, or a foreign nonprofit corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a forty dollar fee. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this section does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

**SECTION 5. EFFECTIVE DATE.** Sections 3 and 4 of this Act become effective on January 1, 1997.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 106****HOUSE BILL NO. 1328**

(Representatives Froseth, Galvin, Coats)  
(Senator O'Connell)

**NONPROFIT CORPORATION MERGER WITH  
FOREIGN CORPORATION**

AN ACT to create and enact section 10-25-06.1 of the North Dakota Century Code, relating to the merger of North Dakota nonprofit corporations with foreign nonprofit corporations.

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

**SECTION 1.** Section 10-25-06.1 of the North Dakota Century Code is created and enacted as follows:

**10-25-06.1. Merger with foreign nonprofit corporation.**

1. A nonprofit corporation may merge with a foreign nonprofit corporation by following the procedures in this section.
2. Each nonprofit corporation shall comply with sections 10-25-01 through 10-25-06.1 with respect to the merger and each foreign nonprofit corporation shall comply with the applicable laws under which it was incorporated or by which it is governed.
3. If the surviving corporation in a merger will be a nonprofit corporation, it shall comply with this chapter.
4. If the surviving corporation in a merger will be a foreign nonprofit corporation and will conduct affairs in this state, it shall comply with the provision of chapter 10-27 with respect to foreign corporations.
5. In every case the surviving corporation shall file with the secretary of state:
  - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent corporation; and
  - b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding and an address to which process may be forwarded.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 107

### HOUSE BILL NO. 1145

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

## MYRON G. NELSON FUND CONVERSION AND OPERATION

AN ACT to create and enact two new sections to chapter 10-30.2 of the North Dakota Century Code, relating to the conversion of the operations and resources of the Myron G. Nelson Fund, Incorporated, to a small business investment corporation; to amend and reenact sections 6-03-38, 7-02-10, 10-04-05, 10-04-06, subsection 2 of section 10-30.2-01, sections 10-30.2-07, 10-30.2-11, 10-30.2-12, 10-30.2-13.1, 10-30.2-14, 26.1-05-19, subdivision p of subsection 1 of section 57-38-01.2, and subdivision h of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to reporting requirements and tax credits and permitting investment in the Myron G. Nelson Fund, Incorporated, and a small business investment company; and to repeal chapter 6-09.2 and sections 10-30.2-02, 10-30.2-03, 10-30.2-04, 10-30.2-05, 10-30.2-06, 10-30.2-08, 10-30.2-09, and 10-30.2-10 of the North Dakota Century Code, relating to industrial development bonds and the creation and operation of the Myron G. Nelson Fund, Incorporated.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-03-38 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-38. Assets not to be used in other business - Exceptions - Penalty.** No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, ~~purchase voting common stock of Myron G. Nelson Fund, Incorporated, pursuant to section 10-30.2-04, or~~ purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to invest in stocks of subsidiary corporations, when the activities of such corporations are incidental to banking activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary corporations, and to examine its records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition, the

state banking board has power to authorize state banks to engage in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to this title is guilty of a class A misdemeanor.

**SECTION 2. AMENDMENT.** Section 7-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**7-02-10. Power to make limited investments in certain securities.** A building and loan association has the power to invest not to exceed in the aggregate twenty percent of its assets in the following securities:

1. In commercial paper due in not more than one year from the date of the loan;
2. In first lien public utility, industrial, or equipment trust bonds; and
3. In first mortgage real estate bonds where the total issue thereof does not exceed fifty percent of the value of the property; and
4. ~~In voting common stock of Myron G. Nelson Fund, Incorporated, purchased pursuant to section 10-30-2-04.~~

**SECTION 3. AMENDMENT.** Section 10-04-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-05. Exempt securities.** Sections 10-04-04, 10-04-07, 10-04-07.1, and 10-04-08 shall not apply to any of the following securities:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.
2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.

3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable or fixed annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or other public service utility, if the corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, provided, however, that a corporation or limited liability company issuing securities exempted under this subsection and which has not filed an application for approval of such securities with the public service commission of the state of North Dakota, shall file with the commissioner a copy of the registration statement with all amendments thereto filed with the securities and exchange commission of the United States, if such a registration statement is made or filed, or a copy of the informative statement made to or filed with any commission, board, or body of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, by which said corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities, and shall pay a filing fee of twenty-five dollars.
5. Securities issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes and not for pecuniary profit.
6. Securities issued by an issuer which meets all of the following conditions:
  - a. If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus.
  - b. A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 [Pub. L. 73-290; 48 Stat. 881; 15 U.S.C. 78a et seq.] and has been so registered for the three years immediately preceding the offering date.
  - c. Neither the issuer nor a significant subsidiary has had a material default during the lesser of the last seven years or the issuer's existence in the payment of (1) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (2) rentals under leases with terms of three years or more. A "material default" is a failure to pay, the effect of which is to cause indebtedness to become due prior to its stated maturity or to cause termination or reentry under a lease prior to its stated expiration, if the indebtedness or the rental obligation for the

unexpired term exceeds five percent of the issuer's (and its consolidated subsidiaries') total assets, or if the arrearage in required dividend payments on preferred stock is not cured within thirty days.

- d. The issuer has had annual consolidated net income (before extraordinary items and the cumulative effect of accounting changes) as follows: (1) at least one million dollars in four of its last five fiscal years including its last fiscal year, and (2) if the offering is of interest-bearing or of fixed or floating rate dividend securities, at least one and a half times its annual interest and dividend expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds for its last fiscal year. Floating rate dividend shall be calculated with reference to interest rates in the marketplace at the time of the offering. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than fifteen months from the commencement of the offering.
- e. If the offering is of stock or shares (other than preferred stock or shares), and except as otherwise required by law, the securities have voting rights at least equal to the securities of each of the issuer's outstanding classes of stock or shares (other than preferred stock or shares), with respect to (1) the number of votes per share, and (2) the right to vote on the same general corporate decisions.
- f. If the offering is of stock or shares (other than preferred stock or shares), the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least one thousand two hundred persons, and on that date there are at least seven hundred fifty thousand of the shares outstanding with an aggregate market value, based on the average bid price, of at least three million seven hundred fifty thousand dollars. In determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owners.
- g. Provided that, if the securities to be issued are listed, or approved for listing upon notice of issuance, on the New York stock exchange, inc., or the American stock exchange, inc., and the current original listing standards of that exchange are satisfied as of the end of the issuer's most recent fiscal year, the conditions of subdivision c need be met for only five years and the annual net earnings requirement of paragraph 1 of subdivision d shall be two hundred fifty thousand dollars.
- h. And provided further that, if the issuer of the securities is a finance company with liquid assets of at least one hundred five percent of its liabilities (other than deferred income taxes, deferred investment tax credits, capital stock, and surplus) at the end of each of its last five fiscal years, the net income requirement of paragraph 2 of subdivision d, but before deduction for interest expense, shall be one and a quarter times its annual interest expense. "Finance

company" means a company engaged (directly or through consolidated subsidiaries) primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring. "Liquid assets" means cash, receivables payable on demand or not more than twelve years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

- i. If the issuer is a successor to another issuer, it shall be deemed to have met the conditions in subdivisions b, c, and d if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.
7. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which is eligible for discounting by federal reserve banks, has at the time of issuance a definite maturity (after all days of grace, if any) of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.
8. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale. The exemptions herein specified must be proved by any person who may legally offer such securities for sale in the state of North Dakota by filing with the commissioner evidence in such form as he may require for each issue of securities for which exemption is provided herein and paying a filing fee of ten dollars.
9. Securities issued by any cooperative formed under the statutes of the state of North Dakota.
10. Any equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security where the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note.
11. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 10, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other

evidences of debts secured thereby. Before any security described in this subsection is offered for sale, the person intending to offer it shall file with the commissioner descriptive circulars of the collateral securities and pay a filing fee to the commissioner of twenty-five dollars. Unless the commissioner makes his order within three days after the receipt of such circulars requiring the securities to be qualified by application under this chapter, the securities shall be exempt.

12. The execution of orders for purchase of securities by a registered dealer provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid to the registered dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker.
  13. Securities issued by a venture capital corporation or limited liability company organized under chapter 10-30.1.
  14. ~~Securities issued by Myron G. Nelson Fund, Incorporated, pursuant to section 10-30.2-04.~~
  - ~~15.~~ Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.
- ~~16.~~ 15. a. Any security listed or designated, or approved for listing or designation upon notice of issuance on:
- (1) The New York stock exchange;
  - (2) The American stock exchange;
  - (3) The national association of securities dealers automated quotation national market system; or
  - (4) Any other stock exchange or automated quotation system which the commissioner approves by rule;
- b. Any other security of the same issuer which is of senior or substantially equal rank;
- c. Any security called for by subscription rights or warrants so listed or approved; or
- d. Any warrant or right to purchase or subscribe to any of the foregoing.



The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that the exchange, system, or particular security does not comply with paragraphs 1 through 4 of the memorandum of understanding regarding a model uniform marketplace exemption from state securities registration requirements [53 Federal Register 52550, December 28, 1988], as they may be amended by agreement of the parties to that memorandum. The commissioner shall make this determination in accordance with the provisions of section 10-04-06.1, except that no summary suspension may be entered pending a final determination for an exchange or system.

- ~~17.~~ 16. Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

**SECTION 4. AMENDMENT.** Section 10-04-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-06. Exempt transactions.** Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, and 10-04-10 shall not apply to any of the following transactions:

1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy.
2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt, provided that the amount of such securities does not exceed two percent of the entire issue of each issue of such securities outstanding, and provided further that before proceeding to sell such pledged securities the pledgee shall notify the commissioner and obtain his permission to such sale, unless such securities are exempted under section 10-04-05.
3. Any isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, dealer, or salesman and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any dealer or salesman participating in an isolated sale from registering in accordance with section 10-04-10, nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.
4. Stock dividends or other distributions by a corporation or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation or membership interest of a limited liability company to or among its own stockholders or members, where no commission or other remuneration is paid or given for soliciting or effecting such sale or distribution to stockholders or members.
5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer.

6. Any transaction incident to a vote by stockholders pursuant to the articles of incorporation or the applicable corporation or limited liability company statute on a merger, consolidation, reclassification of securities, or sale of corporate or limited liability company assets in consideration of the issuance of securities of another corporation or limited liability company, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
  - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.
  - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.
  - c. A nationally recognized securities manual approved by the commissioner contains, and has contained for a period of not less than ninety days prior to the sale, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal year preceding that date or the most recent year of operations.
  - d. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.
  - e. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
  - (1) The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.

- (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).
- (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of one hundred dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in paragraphs 1, 2, and 3 with or without the substitution of a limitation on remuneration.

- b. Any offer or sale in this state of common stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:
  - (1) The issuer reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.
  - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5), except reasonable and customary commissions paid by the issuer to a dealer or salesman registered under this chapter or others who the commissioner may designate by rule.
  - (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
  - (4) No public advertising matter or general solicitation, other than tombstone advertisements that the commissioner shall prescribe by rule, is used in connection with any offers or sales.
  - (5) At least eighty percent of the net proceeds from the sale of the securities must be used in connection with the operations of the issuer in this state. "Net proceeds" means gross proceeds less commissions and sales expenses.
  - (6) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree no less than seventy-two hours prior to the sale of the security.
  - (7) The gross proceeds of the offering may not exceed five hundred thousand dollars.
  - (8) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other

information or documents the commissioner may require, together with a filing fee of one hundred dollars.

- (9) All funds raised in the offering are placed in an escrow account until the total offering has been sold.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption or waive the conditions in paragraphs 6 and 7.

- c. The offer or sale of a security offered or sold in compliance with a limited offering transactional exemption that the commissioner, by rule, may adopt to further the objectives of compatibility with the exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states.
  - d. The exemptions provided under subdivisions a, b, and c may not be combined.
10. The sale of capital stock of a corporation or membership interests of a limited liability company may be exempted by the securities commissioner if the corporation or limited liability company is organized under chapter 10-30 or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended; or the sale of memberships, including dues, in a nonprofit corporation incorporated under chapter 10-24 may be exempted by the securities commissioner if the corporation is organized and operated for the primary purpose of promoting community development.
11. Any security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan; provided, that the securities which fund the plan or are the subject of the plan are otherwise exempt pursuant to section 10-04-05.
12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty dollars in connection with the transaction.
13. The sale of capital stock of a venture capital corporation organized under chapter 10-30.1.
14. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.
15. ~~The offer or sale of a security issued by Myron G. Nelson Fund, Incorporated, pursuant to section 10-30.2-04.~~

16. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

**SECTION 5. AMENDMENT.** Subsection 2 of section 10-30.2-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Corporation" means the ~~corporation established by section 10-30.2-02~~ Myron G. Nelson Fund, Incorporated.

**SECTION 6. AMENDMENT.** Section 10-30.2-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-07. Confidentiality of ~~corporation~~ records.** ~~The following records of the corporation or a small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, are confidential:~~

1. ~~Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase pursuant to this chapter.~~
2. ~~Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.~~

**SECTION 7. AMENDMENT.** Section 10-30.2-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-11. Tax credits for investment by banks, savings and loan associations, trust companies, and insurance companies.** A bank, savings and loan association, trust company, or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the ~~Small Business Administration~~ small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to twenty-five percent of the total amount invested against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. Except in the case of a tax credit that is carried forward from a prior tax year, no tax credit is allowed under this section to a taxpayer who received a tax credit for investment in the corporation and as a result of the dissolution of the corporation agreed to invest in the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958

[Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

**SECTION 8. AMENDMENT.** Section 10-30.2-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-12. Income tax credits for investment.** A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or in investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the ~~Small Business Administration~~ small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]; ~~and any amendments thereto~~, is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested against any state income tax liability imposed against the taxpayer. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1. Except in the case of a tax credit that is carried forward from a prior tax year, no tax credit is allowed under this section to a taxpayer who received a tax credit for investment in the corporation and as a result of the dissolution of the corporation agreed to invest in the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]

**SECTION 9. AMENDMENT.** Section 10-30.2-13.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-13.1. Investment reporting forms.** Within thirty days of the date on which an investment is purchased, or within sixty days from July 1, 1989, the ~~corporation; an affiliate of the corporation; or a~~ small business investment company created by the corporation and licensed by the ~~Small Business Administration~~ small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]; ~~and any amendments thereto~~, must file with the state tax commissioner and provide to the investor the completed form prescribed by the state tax commissioner stating with respect to the investment in the ~~corporation or an affiliate of the corporation~~ small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.] the following:

1. The name, address, and identification number of the taxpayer who purchased the investment.

2. The dollar amount paid by the taxpayer for the investment.
3. The date on which the corporation or an affiliate of the corporation received full consideration for the investment.

**SECTION 10. AMENDMENT.** Section 10-30.2-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-14. State and board of director immunity from liability.** The state of North Dakota and the board of directors are not liable for any damage incurred by an investor in the corporation, or a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public or the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

**SECTION 11.** Two new sections to chapter 10-30.2 of the North Dakota Century Code are created and enacted as follows:

Dissolution of corporation - Validation of acts and transfer of assets. The corporation is dissolved and the assets now held by the corporation are transferred to the Bank of North Dakota.

Final report. Notwithstanding the provisions of section 10-30.2-07, upon final establishment of the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.] the Bank of North Dakota shall prepare and publish a final report of the activities of the corporation for the information of the governor, the legislative assembly, and the public that must describe the manner of the corporation's dissolution and detail the distribution of the corporation's assets.

**SECTION 12. AMENDMENT.** Section 26.1-05-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-05-19. Authorized investment of funds of insurance companies.** A domestic insurance company may invest any of its funds and accumulations in:

1. Securities or obligations made specifically eligible for such investment by law.
2. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, the District of Columbia, or by any state, territory, or insular possession of the United States or by any county, city, township, school district, or other civil division of a state, including those payable from special revenues or earnings specifically pledged for the payment thereof, and those payable from special assessments, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.

3. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by any instrumentality or agency of the United States of America, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
4. Notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator, and securities issued by national mortgage associations.
5. Bonds issued by the industrial commission under chapter 4-36.
6. Bonds guaranteed under chapter 6-09.2.
7. Bonds issued by the North Dakota municipal bond bank pursuant to chapter 6-09.4.
8. Bonds issued by the state board of higher education under chapter 15-55.
9. Revenue bonds issued by the state water commission.
10. Interim financing notes issued by the state water commission pursuant to chapter 61-02.
11. Warrants issued by a city under chapter 40-24.
12. Bonds or notes issued pursuant to chapter 40-33.2.
13. Bonds or other obligations issued pursuant to chapter 40-58.
14. Bonds issued under chapter 40-61.
15. Bonds issued under chapter 54-30.
16. Notes or other evidences of indebtedness of the North Dakota life and health insurance guaranty association not in default.
17. Notes or other interest-bearing obligations of any state development corporation of which the company is a member, issued in accordance with chapter 10-30.
18. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or any province thereof, or by any municipality or district therein, provided that the obligations are valid and legally authorized and issued.
19. Mortgage bonds and debentures of any solvent railway company duly incorporated and authorized under the laws of this state or of any other state or insular possession of the United States, or of the Dominion of Canada or of any province thereof.
20. Mortgage bonds and debentures of any solvent industrial public utility or financial corporation duly incorporated and authorized under the laws of the United States of America or of any state or insular possession



thereof, or of the Dominion of Canada or of any province thereof, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.

21. Preferred stock, of, or common or preferred stock guaranteed as to dividends by, and common stock of, any corporation organized under the laws of the United States, any state or possession of the United States, the Dominion of Canada, or any province of the Dominion of Canada, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes, subject to the following restrictions and limitations:
  - a. The company issuing the preferred stock or guaranteeing the dividends on the common stock must have earned an average amount per annum at least equal to five percent of the par value of its common and preferred stocks or in the case of stocks having no par value, of its issued or stated value outstanding at the date of purchase, over the period of seven fiscal years immediately preceding the date of purchase or which over such period earned an average annual amount at least equal to two times the total of its annual interest charges, preferred dividends, and dividends guaranteed by it, determined with reference to the date of purchase.
  - b. The company issuing any common stock must have earned an average amount per annum at least equal to six percent of the par value of its capital stock, or in the case of stock having no par value of the issued or stated value of such stock, outstanding at the date of purchase over the period of seven fiscal years immediately preceding the date of purchase.
  - c. The company issuing or guaranteeing the stock has not been in arrears in the payment of dividends thereunder for a period of ninety days within the five-year period immediately preceding purchase of the stock.
  - d. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate twenty percent of the life insurance company's admitted assets.
22. Savings accounts, under certificates of deposit or in any other form, in solvent banks and trust companies which have qualified for federal deposit insurance corporation protection, shares and savings accounts, under certificates of deposit, investment certificates, or in any other form, in solvent savings and loan associations organized under federal law or state law of any state which have qualified for federal savings and loan insurance corporation protection, and shares and deposit accounts, under certificates of deposit or in any other form, in solvent state or federally chartered credit unions which are insured by the national credit union administration. Investments in the shares and accounts are not limited to, or by, the amount of any such insurance protection. Short-term or liquidity investments such as certificates of deposit, repurchase agreements, bankers' acceptances, commercial paper, money

market mutual funds, or current interest accounts in solvent banks and trust companies, savings and loan associations, state or federally chartered credit unions, investment brokerage houses which are regulated by a federal agency, and such other types of investments as may be deemed appropriate and authorized by rule by the commissioner.

23. Loans made upon the security of its own policies, if a life insurance company, but no loan on any policy may exceed the reserve value thereof.
24. Notes secured by mortgages on improved unencumbered real estate, including leaseholds substantially having and furnishing the rights and protection of a first real estate mortgage, within the United States of America or any province of the Dominion of Canada. No loan may be made under this subsection unless at the date of acquisition the total indebtedness secured by such lien does not exceed seventy-five percent of the value of the property upon which it is a lien. The loan may be made in an amount exceeding seventy-five percent so long as any amount over seventy-five percent of the value of the property mortgaged is guaranteed or insured by the federal housing administration or guaranteed by the administrator of veterans' affairs or is insured by private mortgage insurance through an insurance company authorized to do business in this state. Loans may be amortized on the basis of a final maturity not exceeding thirty years from the date of the loan with an actual maturity date of the loan at any time less than thirty years. A loan on a single-family dwelling where the loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan may be made in an amount not exceeding eighty percent of the value of the property mortgaged. The loan on a single-family dwelling may be made in an amount exceeding eighty percent so long as any amount over eighty percent of the value of the property mortgaged is insured by private mortgage insurance through an insurance company authorized to do business in this state. Buildings may not be included in the valuation of such property unless they are insured and the policies are made payable to the company as its interest may appear. A loan may not be made in excess of the amount of insurance carried on the buildings plus the value of the land. No insurance company may hold less than the entire loan represented by the bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of the bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee which is a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars is required. In case of proper notification of default, the trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of the bondholders under the provisions of the trust indentures. An insurance company may acquire such an interest in real estate directly or as a joint

venture or through a limited or general partnership in which the insurance company is a partner. An insurance company acquiring such an interest in real estate on the basis of a joint venture or through a limited or general partnership may acquire such an interest so long as the company's interest does not exceed seventy-five percent of the value of the property.

25. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States of America, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection 24.
26. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:
  - a. Real estate used primarily for farming or agriculture may not be acquired under this subsection.
  - b. Investments made by any company under this subsection may not at any time exceed ten percent of the admitted assets of the company.
  - c. An investment in any single parcel of real estate acquired under this subsection may not exceed two percent of the admitted assets of the company.
  - d. The real estate, including the cost of improvements, must be valued at cost and the improvements may be depreciated annually at an average rate of not less than two percent of the original cost.
  - e. An insurance company may acquire such real estate or an interest in such real estate directly or as a joint venture or through a limited or general partnership in which the insurance company is a partner.
27. Land and buildings used as home or regional offices, subject to the following provisions and limitations:
  - a. Land and buildings thereon in which it has its principal office and any other real estate including regional offices requisite for its convenient accommodation in the transaction of its business.
  - b. Investments or total commitment in the land and buildings may not aggregate more than ten percent of the company's admitted assets without the consent of the commissioner.
  - c. The real estate, including the cost of improvements, must be valued at cost and the improvements must be depreciated annually at an average rate of not less than two percent of the original cost.
28. Investments by loans or otherwise, in the purchase of electric or mechanical machines, including software, constituting a data processing system. The company may hold the system as an admitted asset for use in connection with the business of the company if, (a) its aggregate cost does not exceed five percent of the admitted assets of the company; and

- (b) the cost of the components constituting the system is fully amortized over a period of not to exceed seven years. If a data processing system consists of separate components acquired at different times, then the cost of each component must be amortized over a period not to exceed seven years commencing with the date of acquisition of each component.
29. Promissory notes amply secured by the pledge of bonds or other evidences of indebtedness in which the company is authorized to invest its funds by the provisions of this section.
30. ~~Loans, securities, or investments in addition to those permitted in this section; including voting common stock of Myron G. Nelson Fund, Incorporated; issued pursuant to section 10-30.2-04 whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate of such company's investments under this subsection may not exceed either five percent of the company's admitted assets, or the amount equal to the company's unassigned surplus, whichever is less.~~
- ~~31.~~ Ownership of, or loans secured by first liens upon:
- Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term "production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant.
  - Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produce, which interests or rights may be subject to production payments of the nature described in subdivision a.

No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five percent of the dollar value of the recoverable production accruing to such interests or rights will be produced, as determined by independent petroleum engineers at the time of investment.

- ~~32-~~ 31. Obligations secured by a pledge of personal property, as follows:

- a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.
- b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subdivisions a and b may not exceed five percent of the admitted assets of the life insurance company.

32. Loans, securities, or investments issued by a small business investment company created by the Myron G. Nelson Fund, Incorporated, and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]

The commissioner may adopt rules as to investments which are permissible for any domestic insurance company which may waive or increase any limitation on investments or authorize companies to invest their funds in investments which are not specifically mentioned in statutes relating to investments if the commissioner finds, after notice and hearing, that such funds would be well invested and available for the payment of losses. The commissioner, in adopting such rules, may not be any more restrictive, or place any greater limitations on, any type of investment in which companies are authorized by statute to invest their funds.

This section does not prohibit a company from taking any action deemed necessary or expedient for the protection of investments made by it or from accepting in good faith, to protect its interests, securities, or property not mentioned in this section in payment or to secure debts due to it.

**SECTION 13. AMENDMENT.** Subdivision p of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- p. Reduced by any dividends received from stock issued by Myron G. Nelson Fund, Incorporated, ~~pursuant to section 10-30.2-04~~ to the extent the dividends are included in taxable income.

**SECTION 14. AMENDMENT.** Subdivision h of subsection 1 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

- h. Reduced by any dividends received from stock issued by Myron G. Nelson Fund, Incorporated, ~~pursuant to section 10-30.2-04~~ to the extent the dividends are included in taxable income.

**SECTION 15. REPEAL.** Chapter 6-09.2 of the North Dakota Century Code and sections 10-30.2-02, 10-30.2-03, 10-30.2-04, 10-30.2-05, 10-30.2-06, 10-30.2-08, 10-30.2-09, and 10-30.2-10 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved March 27, 1995  
Filed March 28, 1995

## CHAPTER 108

## HOUSE BILL NO. 1289

(Representative Berg)

(Senator Krebsbach)

TECHNOLOGY TRANSFER ECONOMIC  
DEVELOPMENT FUND

AN ACT to create and enact two new sections to chapter 10-30.4 of the North Dakota Century Code, relating to the establishment of the technology transfer economic development fund and the authority of technology transfer, incorporated; to amend and reenact sections 4-01-19, 6-09.10-02.1, 10-30.3-11, and 10-30.4-03 of the North Dakota Century Code, relating to an agriculture marketing bureau, the duties of the credit review board, the income level requirement of the North Dakota future fund, and the organization and management of technology transfer, incorporated; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-01-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-01-19. Marketing bureau.** ~~Within the department~~ The commissioner of agriculture of this state ~~shall establish and maintain~~ a marketing bureau ~~must be established and maintained~~ for the purpose of gathering and disseminating statistical information on agricultural marketing problems of the state; and ~~to engage~~ engaging in marketing services of agricultural products. Any moneys received or generated by the pride of Dakota program must be deposited in the general fund in the state treasury.

<sup>50</sup> **SECTION 2. AMENDMENT.** Section 6-09.10-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-02.1. Additional duties of board.** In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.
3. Recommend policies and procedures regarding the adult farm management program to the state board of vocational education.
4. ~~Develop and administer a grant program to provide farmers with access to the farm diversification analytic system. The program shall~~

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<sup>50</sup> Section 6-09.10-02.1 was also amended by section 1 of Senate Bill No. 2305, chapter 98.

coordinate Coordinate a farm management delivery system among the adult farm management program, agricultural mediation service, and the North Dakota state university extension service.

<sup>51</sup> **SECTION 3. AMENDMENT.** Section 10-30.3-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.3-11. North Dakota future fund uses - Distribution - Limitations.**

1. The fund moneys may be used for the purposes of this chapter as provided in section 10-30.3-02. Moneys may be used to provide working capital or for financing the purchase of fixed assets, but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
2. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation. ~~The rules must include a requirement that:~~
  - a. ~~Eighty-five percent of the full-time employees of a rural North Dakota business or North Dakota American Indian business receiving moneys or other assistance from the North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the life of the loan; equity position; or other financial relationship;~~
  - b. ~~Every full-time employee of an urban North Dakota business receiving moneys or other assistance from the North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the first year following the receipt of moneys from the fund; and~~
  - c. ~~After the first year following the receipt of moneys from the fund, ninety percent of the full-time employees of an urban North Dakota business receiving moneys or other assistance from the North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the remaining period of the loan; equity position; or other financial relationship.~~

For purposes of this subsection, "full-time employee" means a person employed to work thirty-two hours or more per week. The rules must establish procedures for determining compliance with subdivisions a, b,

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<sup>51</sup> Section 10-30.3-11 was repealed by section 11 of House Bill No. 1021, chapter 21.



~~and e and sanctions for failure to comply. The department may renegotiate, at any time, any contract entered into with a business under this section to reflect changes by the legislative assembly in the percentage of employees subject to the income requirement of this section.~~ The rules must include requirements for and methods of distribution of the funds generally targeted for a distribution of forty percent businesses in rural areas, twenty percent businesses in urban areas, twenty percent North Dakota American Indian businesses, and twenty percent to be undesignated. Any unused funds in any category may be transferred to the undesignated portion during the second year of the biennium under rules adopted by the director of the department of economic development and finance. Moneys in the undesignated portion of the funds may be utilized in any of the three targeted areas.

**SECTION 4. AMENDMENT.** Section 10-30.4-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.4-03. Organization.**

1. A board of directors shall manage the corporation. The board of directors shall adopt articles of incorporation and bylaws consistent with the requirements of section 10-30.4-02. The board of directors consists of:
  - a. ~~Until July 1, 1995, the~~ The president of the North Dakota state university of agriculture and applied science, or the president's designee and the president of the state university of North Dakota, or the president's designee.
  - b. ~~After June 30, 1995, two members appointed by the commissioner of higher education, one of which may be the commissioner.~~
  - c. The director of the department of economic development and finance.
  - ~~d.~~ c. A representative of the North Dakota industrial development association, as appointed by that association.
  - ~~e.~~ d. Three members appointed by the governor, representing the primary sector industries of agriculture, energy, manufacturing, and export services.
2. The members appointed under subdivisions ~~b, c and d; and e~~ of subsection 1 must be appointed in a manner that results in subsequent terms of three years staggered so that the term of at least one member expires each year. Members may be reappointed for additional terms.

**SECTION 5.** A new section to chapter 10-30.4 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Technology transfer economic development fund - Continuing appropriation. The technology transfer economic development fund is established from moneys appropriated from the general fund. The fund is a revolving fund and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. The fund is not subject to section 54-44.1-11. All assets, investments, contracts, partnerships, and business

transactions of technology transfer, incorporated before the effective date of this Act must be transferred to the technology transfer economic development fund on the effective date of this Act.

**SECTION 6.** A new section to chapter 10-30.4 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Technology transfer economic development fund uses. The moneys in the technology transfer economic development fund may be used for the purposes of this chapter. Moneys may be used to make grants, loans, and other forms of suitable investments determined by the corporation to be appropriate for the commercialization of technology in this state. A portion of the fund may be used to defray the operating and administrative expenses of the corporation, including staff salaries and expenses. However, moneys from the return of project investments may not be used to defray the operating and administrative expenses of the corporation.

Approved April 7, 1995

Filed April 7, 1995

# COUNTIES

## CHAPTER 109

### SENATE BILL NO. 2253

(Senator Urlacher)  
(Representatives Brown, Martin)

## COUNTY SEAT REMOVAL PETITIONS AND ELECTIONS

AN ACT to amend and reenact sections 11-04-04 and 11-04-11 of the North Dakota Century Code, relating to petitions and elections for the removal of a county seat; and to repeal section 11-04-12 of the North Dakota Century Code, relating to removal of county seats not located on a railroad or interstate river.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 11-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**11-04-04. County seat - Removal - Petition - Election.** Whenever a petition of qualified electors of the county equal in number to ~~twenty-five~~ thirty-three percent of the votes cast in the county for the office of governor at the preceding gubernatorial election ~~shall be~~ is presented to the board of county commissioners of that county asking removal of the county seat from its current location to a place designated in the petition and that an election be held to determine whether ~~or not~~ such the removal shall must occur, the board of county commissioners shall submit the question of removal to the qualified electors of the county at the next general election if the petition conforms to the requirements of this chapter.

**SECTION 2. AMENDMENT.** Section 11-04-11 of the North Dakota Century Code is amended and reenacted as follows:

**11-04-11. Interval required between elections for the removal of a county seat.** ~~Except as otherwise provided in section 11-04-12, an~~ An election for the removal of a county seat ~~shall may~~ may not be held more often than once in four years. ~~This section shall apply even though an election held under this chapter has resulted in the failure of any place other than the then county seat to secure at least two-thirds of the votes cast on the question.~~

**SECTION 3. REPEAL.** Section 11-04-12 of the North Dakota Century Code is repealed.

Approved March 7, 1995  
Filed March 7, 1995

**CHAPTER 110****HOUSE BILL NO. 1349****(Representative Grosz)****ANIMALS RUNNING AT LARGE REGULATION**

AN ACT to create and enact a new subsection to section 11-11-14 of the North Dakota Century Code, relating to the prohibition of animals running at large.

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

**SECTION 1.** A new subsection to section 11-11-14 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

To regulate or prohibit the running at large of animals.

Approved April 4, 1995

Filed April 4, 1995

**CHAPTER 111****SENATE BILL NO. 2472**

(Senators B. Stenehjem, Lips, O'Connell)  
(Representatives Carlisle, D. Henegar, Kempenich)

**AUDITOR'S CERTIFICATES**

AN ACT to amend and reenact sections 11-13-12 and 11-13-14 of the North Dakota Century Code, relating to auditor's certificates on real property conveyance documents; and to repeal section 11-13-13 of the North Dakota Century Code, relating to real property records required to be kept by county auditors.

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

**<sup>52</sup> SECTION 1. AMENDMENT.** Section 11-13-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**11-13-12. Auditor's certificate of taxes on deeds, contracts for deed, plats, replats, and patents.**

1. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer whether there are delinquent taxes or special assessments against the land described in the instrument or whether the land has been sold for taxes.
  - a. If there are delinquent taxes or special assessments against lands described in the instrument, the auditor shall certify the same. When the receipt of the county treasurer is produced for the delinquent and current taxes or special assessments, the auditor shall enter: "Taxes and special assessments paid and transfer ~~entered~~ accepted".
  - b. If the land described has been sold for taxes to a purchaser other than the county, the auditor shall enter "Taxes paid by sale of the land described within and transfer ~~entered~~ accepted".
  - c. If the instrument presented is entitled to record without regard to taxes, the auditor shall enter "Transfer ~~entered~~ accepted".
  - d. ~~Entries~~ Acceptances required under this subsection must be accompanied by the auditor's signature.
2. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and

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<sup>52</sup> Section 11-13-12 was also amended by section 1 of Senate Bill No. 2234, chapter 112.

records in the auditor's office whether there are current taxes or current special assessments against the land described in the instrument. If there are current taxes or current special assessments against the land described in the instrument, the auditor shall place a statement on the instrument showing the amount of any current taxes or current special assessments. When the receipt of the county treasurer is produced showing payment of delinquent and current taxes and special assessments, the auditor shall enter "Taxes and special assessments paid and transfer ~~entered~~ accepted". For purposes of this subsection:

- a. "Current special assessments" means special assessments that have been certified to the county auditor for collection but are not yet delinquent.
  - b. "Current taxes" means real estate taxes, as shown on the most recent tax list prepared by the county auditor, which are not yet delinquent.
3. Whenever a plat, replat, auditor's lot, or any instrument that changes the current property description, including condominium ownership established under chapter 47-04.1, is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer whether there are current or delinquent taxes, special assessments and, after February first of each year, the tax estimate for that year against the land described in the instrument or whether the land has been sold for taxes. If there are current taxes, delinquent taxes, delinquent special assessments, installments of special assessments, or tax estimates against lands described in the instrument, the auditor shall certify the same.

**SECTION 2. AMENDMENT.** Section 11-13-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**11-13-14. Auditor's certificate on conveyances to the state of North Dakota - Recording conveyance.** Whenever any sheriff's deed or other conveyance of real property acquired by the state of North Dakota doing business as the Bank of North Dakota or any state agency for which the Bank of North Dakota acts as agent is offered for ~~record~~ recording, the county auditor shall enter such transfer and the register of deeds shall record the same without regard to the payment of any taxes due thereon. ~~The provisions of sections Section 11-13-12 and 11-13-13 are~~ is not applicable thereto. In such case, the county auditor shall enter on the sheriff's deed or other conveyance, over the county auditor's official signature, the words "Transfer ~~entered~~ accepted", and the register of deeds then shall receive and record the same.

**SECTION 3. REPEAL.** Section 11-13-13 of the North Dakota Century Code is repealed.

Approved March 17, 1995  
Filed March 20, 1995

**CHAPTER 112****SENATE BILL NO. 2234**

(Senators Krauter, Tallackson, Watne)  
(Representatives Berg, K. Henegar, Kerzman)

**COUNTY AUDITOR TAX STATEMENTS**

AN ACT to amend and reenact subsection 2 of section 11-13-12 of the North Dakota Century Code, relating to the county auditor's statement regarding taxes and special assessments on deeds and other instruments.

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

<sup>53</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 11-13-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office whether there are current taxes or current special assessments against the land described in the instrument. If there are current taxes or current special assessments against the land described in the instrument, the auditor shall place a statement on the instrument showing the amount of any current taxes or current special assessments. When the receipt of the county treasurer is produced showing payment of delinquent and current taxes and special assessments, the auditor shall enter "Taxes and special assessments paid and transfer entered". For purposes of this subsection:
  - a. "Current special assessments" means special assessments that have been certified to the county auditor for collection but are not yet delinquent and have become due on the first day of January under section 57-20-01.
  - b. "Current taxes" means real estate taxes, as shown on the most recent tax list prepared by the county auditor, which are not yet delinquent and have become due on the first day of January under section 57-20-01.

Approved March 15, 1995  
Filed March 15, 1995

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<sup>53</sup> Section 11-13-12 was also amended by section 1 of Senate Bill No. 2472, chapter 111.

**CHAPTER 113****HOUSE BILL NO. 1262**

(Representatives Wentz, Martinson)  
(Senators Freborg, Scherber, Watne)

**DISORDERLY CONDUCT RESTRAINING ORDER  
NOTICE**

AN ACT to create and enact a new section to chapter 11-15 and a new section to chapter 12-60 of the North Dakota Century Code, relating to duties of sheriffs and the bureau of criminal investigation with respect to protection and restraining orders.

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

**SECTION 1.** A new section to chapter 11-15 of the North Dakota Century Code is created and enacted as follows:

**Issuance of protection and restraining orders - Duty of sheriff.** The sheriff shall notify the bureau of criminal investigation of any disorderly conduct restraining order issued against an individual in the sheriff's county pursuant to section 12.1-31.2-01 within twenty-four hours of issuance. The notice must include any information required by the bureau of criminal investigation. The law enforcement agency shall enter the order into any information system available in the state that is used to list outstanding warrants for a period of one year or until the date of expiration or termination as specified in the order. The order is enforceable in any jurisdiction in this state.

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

**Bureau to maintain registry of orders.** The bureau shall maintain a registry of all orders of which it receives notice under section 1 of this Act and under section 14-07.1-03.

Approved March 7, 1995

Filed March 8, 1995



## CHAPTER 114

### SENATE BILL NO. 2482

(Senators W. Stenehjem, Krauter)  
(Representatives Boucher, Kelsch, Rydell)

### STATE FORENSIC EXAMINER

AN ACT to create and enact three new sections to chapter 11-19.1 and a new section to chapter 23-01 of the North Dakota Century Code, relating to the establishment of a state forensic examiner; and to amend and reenact sections 11-19-09, 11-19.1-06, 11-19.1-17, and 12-45-01 of the North Dakota Century Code, relating to the office of coroner and the state forensic examiner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 11-19-09 of the North Dakota Century Code is amended and reenacted as follows:

**11-19-09. Physicians** State forensic examiner may be summoned as experts expert - Compensation. If, on an inquest, the coroner or the jury deems it necessary, the coroner may summon one or more physicians or surgeons the state forensic examiner to make a scientific examination of the body. ~~The physician or surgeon in such case shall receive reasonable compensation instead of witness fees.~~

**SECTION 2. AMENDMENT.** Section 11-19.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-06. Persons authorized to act where no resident physician.** In such counties in which no physician is residing or available, the duties of coroner as herein provided ~~shall~~ must be performed by the sheriff, the state highway patrol, or any special agent of the bureau of criminal investigation. The sheriff, the state highway patrol, or special agent shall call upon the nearest physician coroner or deputy coroner from an adjacent county to investigate the medical cause of death of all coroner cases within said county. Where, because of distance or adverse conditions, a physician coroner is not available, the sheriff, the state highway patrol, or special agent shall have the ~~closest practicing physician~~ state forensic examiner or the forensic examiner's designee called in to investigate and certify as to the medical cause of death.

**SECTION 3. AMENDMENT.** Section 11-19.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-17. Application.** This chapter applies to every county in this state having a population of eight thousand or more, and chapter 11-19 and section 11-10-02 are not applicable to such counties. This chapter does not apply to counties having a population of less than eight thousand and such counties are governed by chapter 11-19 and section 11-10-02, except that coroners shall be appointed in these counties according to section 11-19.1-03 ~~and~~, these counties shall pay coroner's fees to other counties under subsection 1 of section 11-19.1-16, and these counties are subject to section 4 of this Act.

**SECTION 4.** Three new sections to chapter 11-19.1 of the North Dakota Century Code are created and enacted as follows:

State forensic examiner - Authority. Whenever requested to do so by the local coroner, acting coroner, or the local state's attorney, the state forensic examiner shall assume jurisdiction over a dead body for purposes of investigating the cause of death. The state forensic examiner may exercise all powers and authority bestowed upon the office of coroner. The cost of performing an autopsy, investigation, or inquiry remains with the county, except for an autopsy, investigation, or inquiry resulting from the death of a patient or resident of the state hospital or any other state residential facility or an inmate of a state penal institution.

State forensic examiner - Required reports. The coroner or any person acting as coroner shall report to the state forensic examiner every death that occurs:

1. As a result of violence or casualty;
2. Suddenly when in apparent good health;
3. In a suspicious or unusual manner; or
4. Involving a patient or resident of the state hospital or any other state residential facility or an inmate of a state, county, or city penal institution.

State forensic examiner - Required consultation. The coroner or any person acting as a coroner shall actively consult with the state forensic examiner in every death involving an inmate of a state, county, or city penal institution; death involving a child under the age of one when in apparent good health; and death that the coroner or acting coroner believes may have resulted from a suicide, homicide, or as a result of child abuse or neglect.

<sup>54</sup> **SECTION 5. AMENDMENT.** Section 12-45-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12-45-01. Inquest required.** If a person confined in the penitentiary or the North Dakota industrial school dies, the warden or superintendent immediately shall notify the coroner of Burleigh County or Morton County, as the case may be, or when there is a vacancy in the office, or the coroner is absent or unable to act, ~~a district judge serving the county~~ the state forensic examiner. The coroner or ~~district judge~~ the state forensic examiner so notified immediately shall take possession of the body of the deceased and remove the body from the penitentiary or North Dakota industrial school and retain the body for at least twenty-four hours, and shall hold an inquest thereon and inquire carefully into the cause of the deceased's death, in the manner provided by law in cases of persons supposed to have died by unlawful means. No officer or employee of the penitentiary or North Dakota industrial school may be placed or permitted to serve on the jury at the inquest.

**SECTION 6.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Department to employ state forensic examiner - Qualifications - Duties. The state department of health and consolidated laboratories may employ and establish

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<sup>54</sup> Section 12-45-01 was also amended by section 25 of House Bill No. 1027, chapter 120.

the qualifications and compensation of the state forensic examiner. The state forensic examiner must be a licensed physician. The state forensic examiner shall:

1. Consult with local coroners on the performance of their duties as coroners;
2. Conduct investigations into the cause of death of and perform autopsies on any dead body whenever requested to do so by the acting local county coroner or the local state's attorney;
3. Provide training and educational materials to local county coroners, law enforcement, and any other person the state forensic examiner deems necessary; and
4. Perform other duties assigned by the state health officer.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 115

## SENATE BILL NO. 2357

(Senator Nething)

## CORONER ASSISTANTS AND ACTING CORONERS

AN ACT to amend and reenact sections 11-19-19 and 11-19.1-05 of the North Dakota Century Code, relating to acting coroners and appointment of assistant coroners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-19-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-19-19. Acting coroner. When there is no coroner or the coroner is absent or unable to act, the following persons are authorized to perform the duties of coroner in relation to dead bodies:

1. The sheriff of the county, a state highway patrol officer, or any special agent of the bureau of criminal investigation.
2. An emergency medical technician who has received previous written notification from the attending physician of the deceased person that the person was suffering from an illness known to be terminal.
3. A forensic dentist or a dentist with a background in forensics.

SECTION 2. AMENDMENT. Section 11-19.1-05 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-05. Appointment of assistant. The coroner may appoint in writing an assistant coroner or coroners who shall be licensed physicians of good standing in their profession or ~~pathologists~~, forensic dentists, who shall assist in doing autopsies and making ~~such~~ pathological and chemical examinations, and performing ~~such~~ the other duties required and directed by the county coroner or recommended by the state's attorney.

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 116****SENATE BILL NO. 2231**

(Senators Nalewaja, Grindberg, W. Stenehjelm, LaFountain)  
(Representatives Kelsch, Price)

**CHILD FATALITY REVIEW PANEL**

AN ACT to create and enact a new subsection to section 11-19.1-01 and four new sections to chapter 50-25.1 of the North Dakota Century Code, relating to definitions and to the duty of the state child protection team to serve as a child fatality review panel; to amend and reenact subsection 2 of section 11-19.1-07, sections 11-19.1-11, 11-19.1-13, 23-02.1-27, 50-25.1-01, 50-25.1-03, 50-25.1-04.1, 50-25.1-05.4, 50-25.1-05.5, 50-25.1-09, 50-25.1-09.1, 50-25.1-10, and 50-25.1-13 of the North Dakota Century Code, relating to reporting the death of a child which may have resulted from child abuse or neglect; and to provide an effective date.

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

**SECTION 1.** A new subsection to section 11-19.1-01 of the North Dakota Century Code is created and enacted as follows:

"Suspicious circumstances" means the existence of one or more of the following factors:

- a. Self-inflicted injury;
- b. Firearm injury;
- c. Severe, unexplained injury;
- d. Pedestrian driveway injury;
- e. An injury to a child which is not witnessed by the individual responsible for the child at the time the injury occurred;
- f. Inadequate supervision;
- g. Malnutrition or delay in seeking medical care;
- h. Confinement;
- i. Bathtub or bucket drowning;
- j. Suffocation or strangulation;
- k. Poisoning;
- l. Prior child abuse or neglect assessment concerns;
- m. Open child protection service case on the victim;

- n. Victim is in the custody of the department of human services, county social services, or the division of juvenile services;
- o. Unexplained death or death in an undetermined manner;
- p. Suspected sexual assault; or
- q. Any other suspicious factor.

**SECTION 2. AMENDMENT.** Subsection 2 of section 11-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person who discovers the dead body of, or acquires the first knowledge of the death of, any ~~child under the age of three years~~ minor who has received or is eligible to receive a certificate of live birth, where the ~~child~~ minor died suddenly when in apparent good health, shall immediately notify law enforcement and the office of coroner of the known facts concerning the time, place, manner, and circumstances of the death. The coroner shall take custody of the body and immediately notify the state's attorney of the county in which the body was discovered. Within twenty-four hours of the notice of a death that occurs under suspicious circumstances, the state's attorney shall consult with a law enforcement agency and the state department of health and consolidated laboratories. The law enforcement agency shall investigate the death and notify the state's attorney of the findings. The coroner shall notify the state health officer of each such death, and shall provide the state health officer the information concerning the death as he the state health officer shall require. The coroner or ~~his~~ the coroner's medical deputy shall notify the parent or guardian of the a child under the age of one year of ~~his~~ the right to the performance of an autopsy, at state expense, as provided by this chapter.

**SECTION 3. AMENDMENT.** Section 11-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-11. Coroner may perform autopsy - Notice of results. The coroner or ~~his~~ the coroner's medical deputy, ~~may~~, if ~~he~~ the coroner deems it necessary, ~~may~~ take custody of the dead body for the purpose of autopsy. When the coroner does not deem an autopsy necessary, the sheriff and state's attorney may direct an autopsy be performed ~~by the coroner or his deputy coroner, or pathologist.~~ Upon the ~~request of a parent or guardian~~ death of a child whose cause of death is suspected by the child's parent or guardian or the coroner or the coroner's medical deputy to have been the sudden infant death syndrome, the coroner or ~~his~~ the coroner's medical deputy, after consultation with the parent or guardian, shall take custody of the dead body ~~for the purpose of autopsy or, in his discretion, may and shall~~ arrange for the performance of the autopsy by a qualified pathologist, unless the county coroner, sheriff, state's attorney, and the parent or guardian all agree that an autopsy is unnecessary. The parents or guardian and the state health officer shall be promptly notified of the results of that autopsy.

**SECTION 4. AMENDMENT.** Section 11-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-13. Cause of death, ~~determination~~ - Determination. The cause of death, the manner of death, and the mode in which the death occurred, as delivered by the coroner and incorporated in the coroner's verdict, ~~shall~~ must be incorporated

in the death certificate filed with the registrar of vital statistics of this state. The term "sudden infant death syndrome" ~~shall~~ may be entered on the death certificate as the principal cause of death ~~where the term is appropriately descriptive of the circumstances surrounding the death of a~~ only if the child is under the age of one year and the death remains unexplained after a case investigation that includes a complete autopsy of the infant at the state's expense, examination of the death scene, and a review of the clinical history of the infant.

**SECTION 5. AMENDMENT.** Section 23-02.1-27 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-27. Disclosure of records.** 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 cause of death may not be disclosed except to a relative or personal representative of the deceased, to the attorney or the agent of a relative or personal representative of the deceased, to the child fatality review panel, or upon order of a court of competent jurisdiction.

**SECTION 6. AMENDMENT.** Section 50-25.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-01. Purpose.** It is the purpose of this chapter to protect the health and welfare of children by encouraging the reporting of children who are known to be or suspected of being abused or neglected ~~and to encourage; the provision providing of adequate services which adequately provide for the protection and treatment of abused and neglected children and to protect them from further harm; the identifying of the cause of children's deaths, where possible; the identifying of those circumstances that contribute to children's deaths; and the recommending of changes in policy, practices, and law to prevent children's deaths.~~

**SECTION 7. AMENDMENT.** Section 50-25.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-03. Persons required and permitted to report - To whom reported.**

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, day care center or any other child care worker, police or law enforcement officer, or member of the clergy having knowledge of or reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.

2. Any person having reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, may report such circumstances to the department ~~or the department's designee~~.

<sup>55</sup> **SECTION 8. AMENDMENT.** Section 50-25.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-04.1. State child protection team - How created - Duties.** The department shall name the members of the state child protection team. The members must be appointed for three-year staggered terms. The member who represents the department shall serve as ~~chairperson~~ presiding officer and is responsible for the transmittal of all team reports made pursuant to this chapter. The ~~chairperson~~ presiding officer shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02, 50-25.1-04, and 50-25.1-05.1. Under procedures adopted by the team, it may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse ~~or~~, neglect, or death resulting from abuse or neglect it deems appropriate. All reports or recommendations issued are subject to ~~the provisions of~~ section 50-25.1-11, except that the team shall make available information reflecting the disposition of reports of institutional child abuse ~~or~~, neglect, or death resulting from abuse or neglect where the identity of persons reporting, and of the children and parents of children involved, is protected.

**SECTION 9.** Four new sections to chapter 50-25.1 of the North Dakota Century Code are created and enacted as follows:

Child fatality review panel. The state child protection team shall serve as a child fatality review panel. The department shall appoint a peace officer licensed in the state, a mental health professional, and any other person as appropriate to assist the panel in the performance of its duties. The department, in coordination with the state department of health and consolidated laboratories, shall adopt rules for the operation of the panel. Panel members are not entitled to compensation or reimbursement of expenses for service on the panel.

Child fatality review panel - Duties. The child fatality review panel shall meet at least semiannually to review the deaths of all minors which occurred in the state during the preceding six months and to identify trends or patterns in the deaths of minors. The panel shall promote:

1. Interagency communication for the management of child death cases and for the management of future nonfatal cases.
2. Effective criminal, civil, and social intervention for families with fatalities.
3. Intervention and counseling of surviving and at-risk siblings, and offer the same.
4. Interagency use of cases to audit the total health and social service systems and to minimize misclassification of cause of death.

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<sup>55</sup> Section 50-25.1-04.1 was also amended by section 2 of Senate Bill No. 2068, chapter 472.



5. Evaluation of the impact of specific risk factors including substance abuse, domestic violence, and prior child abuse.
6. Interagency services to high-risk families.
7. Data collection for surveillance of deaths and the study of categories of causes of death.
8. The use of media to educate the public about child abuse prevention.
9. Intercounty and interstate communications regarding child death.
10. Use of local child protection team members as local child fatality review panelists.
11. Information that apprises a parent or guardian of the parent's or guardian's rights and the procedures taken after the death of a child.

Child fatality review panel - Access to records. Upon the request of a coroner or the presiding officer of a child fatality review panel, any hospital, physician, medical professional, medical facility, mental health professional, or mental health facility shall disclose all records of that entity with respect to any child who has or is eligible to receive a certificate of live birth and who has died. The person submitting the request shall reimburse the disclosing entity for the actual costs of assembling and disclosing the information.

Child fatality review panel - Confidentiality of meetings, documentation, and reports. Notwithstanding section 44-04-19, all meetings of the panel are closed to the public. Notwithstanding section 44-04-18, all documentation and reports, except for an annual report, of the panel are confidential. The panel shall make available to the persons designated in section 50-25.1-11 the documentation and reports of the panel.

<sup>56</sup> **SECTION 10. AMENDMENT.** Section 50-25.1-05.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05.4. Department of ~~human services~~ to adopt rules for review of investigations of probable cause findings.** The department of ~~human services~~ shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse ~~or, neglect, or death resulting from abuse or neglect~~ who is aggrieved by the conduct or result of the investigation of a probable cause finding of the suspected child abuse or neglect.

<sup>57</sup> **SECTION 11. AMENDMENT.** Section 50-25.1-05.5 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>56</sup> Section 50-25.1-05.4 was also amended by section 7 of Senate Bill No. 2068, chapter 472.

<sup>57</sup> Section 50-25.1-05.5 was also amended by section 8 of Senate Bill No. 2068, chapter 472.

**50-25.1-05.5. Child abuse information index - Establishment.** The division of children and family services or other division as determined appropriate by the department shall maintain a child abuse information index of all reports of determinations of probable cause for child abuse ~~or~~, neglect, or death resulting from abuse or neglect filed pursuant to section 50-25.1-05.2.

**58 SECTION 12. AMENDMENT.** Section 50-25.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-09. Immunity from liability.** Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation, furnishing information to an investigator, or in providing protective services under this chapter, or who is a member of the child fatality review panel, is immune from any liability, civil or criminal, except for criminal liability as provided by section 50-25.1-13, that otherwise might result from reporting the alleged case of abuse ~~or~~, neglect, or death resulting from child abuse or neglect. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse ~~or~~, neglect, or death resulting from abuse or neglect must be presumed.

**SECTION 13. AMENDMENT.** Section 50-25.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-09.1. Employer retaliation prohibited.**

1. An employer who retaliates against an employee solely because the employee in good faith reported having reasonable cause to suspect that a child was abused or neglected, or died as a result of abuse or neglect, or because the employee is a child with respect to whom a report was made, is guilty of a class B misdemeanor. It is a defense to any charge brought under this section that the presumption of good faith, described in section 50-25.1-09, has been rebutted.
2. The employer of a person required or permitted to report pursuant to section 50-25.1-03 who retaliates against the person because of a report of abuse or neglect, or a report of a death resulting from child abuse or neglect, is liable to that person in a civil action for all damages, including exemplary damages, costs of the litigation, and reasonable attorney's fees.
3. There is a rebuttable presumption that any adverse action within ninety days of a report is retaliatory. For purposes of this subsection, an "adverse action" is action taken by an employer against the person making the report or the child with respect to whom a report was made, including:
  - a. Discharge, suspension, termination, or transfer from any facility, institution, school, agency, or other place of employment;
  - b. Discharge from or termination of employment;

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<sup>58</sup> Section 50-25.1-09 was also amended by section 10 of Senate Bill No. 2068, chapter 472.

- c. Demotion or reduction in remuneration for services; or
- d. Restriction or prohibition of access to any facility, institution, school, agency, or other place of employment, or persons affiliated with it.

**SECTION 14. AMENDMENT.** Section 50-25.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-10. Abrogation of privileged communications.** Any privilege of communication between husband and wife or between any professional person and his patient or client, except between attorney and client, is abrogated and does not constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding child abuse ~~or~~, neglect, or death resulting from abuse or neglect resulting from a report made under this chapter.

**SECTION 15. AMENDMENT.** Section 50-25.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-13. Penalty for failure to report - Penalty and civil liability for false reports.** Any person required by this chapter to report or to supply information concerning a case of known or suspected child abuse, neglect or abuse, or death resulting from abuse or neglect who willfully, as defined in section 12.1-02-02, fails to do so is guilty of a class B misdemeanor. Any person who willfully, as defined in section 12.1-02-02, makes a false report, or provides false information which causes a report to be made, under this chapter is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor. A person who willfully makes a false report, or willfully provides false information that causes a report to be made, under this chapter is also liable in a civil action for all damages suffered by the person reported, including exemplary damages.

**SECTION 16. EFFECTIVE DATE.** This Act becomes effective on January 1, 1996.

Approved April 17, 1995  
Filed April 18, 1995

## CHAPTER 117

### SENATE BILL NO. 2289

(Senators Nething, Wanzek)  
(Representatives Hanson, Kroeber)

## COUNTY PARK CONCESSIONS

AN ACT to create and enact a new subsection to section 11-28-05 of the North Dakota Century Code, relating to powers of a board of county park commissioners; to amend and reenact sections 48-09-01 and 48-09-02 of the North Dakota Century Code, relating to granting of concessions by a board of county park commissioners; and to declare an emergency.

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

SECTION 1. A new subsection to section 11-28-05 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Lease lands owned or controlled by the board for residential, camping, concession, and other purposes under terms determined by the board, and to deposit and expend any income from the lease as other moneys under the control of the board.

SECTION 2. AMENDMENT. Section 48-09-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-09-01. Granting of concessions for cafes, restaurants, and confectioneries on public buildings and grounds. Any state official, board, or commission, any county official, board, or commission, and any municipal officer, board, or commission, having the supervision, control, and management of any state, county, or municipal building and the adjacent grounds thereof, when it is deemed to be for the public benefit and good, may grant a concession therein or thereon for any cafe, restaurant, or confectionery, by renting, leasing, and licensing any such concession to the highest bidder or best bidder, or both, at a reasonable rental per month, for a period not exceeding eight years, and may reject any and all bids therefor. Provided, the board of directors of any North Dakota fair association or board of county park commissioners may grant a concession under this chapter without letting bids.

SECTION 3. AMENDMENT. Section 48-09-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-09-02. Concession advertised in legal newspaper. ~~When~~ Except as otherwise provided in section 48-09-01, when the concession granted pursuant to section 48-09-01 is deemed worth more than five hundred dollars, the same must be let to the highest bidder or best bidder, or both, after the advertisement for bids therefor once in each week for three consecutive weeks in a legal newspaper published in the city at or near which such concession is located.

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

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 118****SENATE BILL NO. 2261**

(Senator Lee)

(Representatives Koppelman, Maragos)

**REDEMPTION EXPIRATION NOTICE MAILING**

AN ACT to amend and reenact subsection 2 of section 11-33.2-12, and sections 57-27-02, 57-28-05, 57-28-06, and 57-28-18 of the North Dakota Century Code, relating to the notice requirements for subdivision approval and expiration of the period of redemption for a tax certificate.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 11-33.2-12 of the North Dakota Century Code is amended and reenacted as follows:

2. No plat shall be finally approved or disapproved by the board of county commissioners except upon receipt of recommendations by both the county planning commission and the board of township supervisors of the township in which the proposed subdivision is located. The board of county commissioners shall, by registered certified mail, notify the chairman of the board of township supervisors that an application for plat approval has been initiated, either before the county planning commission or before the board of county commissioners, and that the board of township supervisors is requested to make a recommendation on the application. If the board of county commissioners does not receive, by registered certified mail, a recommendation by the board of township supervisors within sixty days after notification, it may take final action on the application for plat approval. The recommendations by either the county planning commission or the board of township supervisors shall not be binding on the county commissioners.

**SECTION 2. AMENDMENT.** Section 57-27-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-27-02. Notice of expiration of period of redemption - Contents and service of notice.**

1. After three years and before ten years from the date of the tax sale to which a tax sale certificate relates, the holder of the tax sales certificate may present it to the county auditor for service of notice of expiration of the period of redemption. The notice must be directed to the person in whose name the property described in the certificate is assessed, to all lienholders of record, and to all mortgagees or assignees of mortgages holding unsatisfied recorded mortgages. The notice must include:
  - a. The description of the property.
  - b. The amount for which the property was sold at tax sale.
  - c. The amount of delinquent property taxes, with penalties and interest, for each year.

- d. The amount of delinquent special assessments, with penalties and interest, for each year.
  - e. The total amount required to redeem the property from tax deed proceedings, not including costs yet to accrue.
  - f. The time when the redemption period will expire.
2. If the current assessment records show that a residential building is located on the property, the county auditor shall deliver the notice of expiration of the period of redemption to the sheriff who shall serve it or cause it to be served personally upon the owner, if known to be a resident of this state. If the owner is a nonresident of this state, the sheriff shall serve the notice by registered certified mail addressed to the owner at the owner's last known post-office address and determine whether personal service upon any person is required under subsection 4. If the current assessment records show that no residential building is located on the property, the auditor shall serve the notice by registered certified mail addressed to the owner at the owner's last known post-office address. If service is made by registered certified mail under this subsection, service must also be made by publication once in each week for three consecutive weeks in the official county newspaper. If notice is published under this section, it must contain the description and any street address of the property. However, the failure to include the street address in the notice does not affect the validity of the notice.
  3. Within ten days after a request by the county auditor, the register of deeds and the clerk of the district court shall furnish the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the property except a person whose only interest is in a mineral interest that was severed from the surface estate before the filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the tax sale certificate issued or deemed to have been issued relates, upon whom the notice of the expiration of the period of redemption must be served.
  4. The notice must be served personally upon any person actually residing upon the property covered by a tax sale certificate and upon any tenant or other person entitled to the possession of the property as may appear from the records of the register of deeds.
  5. The county auditor shall serve the notice of the expiration of the period of redemption upon each mortgagee, lienholder, and other person with an interest in the property except a person whose only interest is in a mineral interest that was severed from the surface estate before the filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the tax sale certificate issued or deemed to have been issued relates, and upon whom personal service is not required by this section, as shown by the records of the register of deeds or the clerk of the district court of the county. The notice must be served by registered certified mail.
  6. The expense of service of the notice under this section must be added to the amount required to redeem. The auditor or sheriff shall make proof of service by mail by affidavit showing the names and addresses of all

parties upon whom the notice was served with the date of mailing in each case and shall attach the registry, certification, and return receipts and file the affidavit and receipts with the original notice of the expiration of the period of redemption. Service by publication under this section must be shown of record by filing of an affidavit of publication.

**SECTION 3. AMENDMENT.** Section 57-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-28-05. Form of notice for service by registered certified mail.** The notice of the expiration of the period of redemption which the county auditor is required to serve by registered certified mail must be substantially in the following form:

**NOTICE OF EXPIRATION OF PERIOD OF REDEMPTION**

To \_\_\_\_\_, the owner of the record title of the real estate hereinafter described, and to all mortgagees, lienholders, and other persons interested in said real estate:

I, \_\_\_\_\_, county auditor of \_\_\_\_\_ County, North Dakota, hereby give notice that the real estate hereinafter described, at the annual tax sale held in the county on the \_\_\_\_\_ of December, 19\_\_, was offered for sale for delinquent taxes against it for the year \_\_\_\_\_ and was sold to the county, that subsequent tax sale certificates have been issued to the county for the years hereinafter set forth, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, and that the same still are the property of such county, and unless redemption is made from each of said tax sale certificates on or before October first, after the date of this notice, tax deeds will be issued to the county, granting to and vesting in it, the absolute title in fee to said real property, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and foreclosing all rights of redemption, and all other rights of the owner, mortgagees, lienholders, and other persons interested therein, as may appear from the records of the register of deeds and the clerk of the district court of said county. There is given herewith the description of such parcels of real estate, and set opposite each description is the amount which will be required upon the date of the expiration of the period of redemption to redeem such real estate from such original and each subsequent tax sale certificate issued to the county, exclusive of the cost of service of this notice.

Said property is described as follows, with the amount required to redeem set out opposite each description, to wit: \_\_\_\_\_

\_\_\_\_\_  
Given pursuant to authority of law this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

County auditor of \_\_\_\_\_ County, North Dakota.

**SECTION 4. AMENDMENT.** Section 57-28-06 of the North Dakota Century Code is amended and reenacted as follows:



**57-28-06. Service of notice by publication.** The county auditor shall serve notice of the expiration of the period of redemption by publication as to all property sold to the county for taxes for which notice is served upon the owner by ~~registered~~ certified mail. The notice may include any number of parcels of property and only one heading is necessary for the entire list. The notice must contain the description and any street address of each parcel of property. However, the failure to include the street address in the notice does not affect the validity of the notice. The notice must include a statement of the cost of publication of the notice. The notice must be published once on or before August first in the official newspaper of the county.

**SECTION 5. AMENDMENT.** Section 57-28-18 of the North Dakota Century Code is amended and reenacted as follows:

**57-28-18. Terms of private sale and redemption and distribution of proceeds.** Any private sale of real property made between the annual November sales must be made upon the same terms and conditions as a sale may be made at the November sale. The sale or redemption of farmland acquired by the county by tax deed is subject to any existing lease of the property for the year of the sale or redemption. If the farmland is to be sold by private sale to any person other than the former owner or other interested person, a deed or contract for deed may not be delivered to the purchaser until thirty days after service by ~~registered~~ certified mail upon the former owner or other interested party of the pending sale, the date when the sale will become final, and the amount required to redeem the property. For the purposes of this section, "other interested party" means the executor, administrator, parent, spouse, or child of the former owner who has notified the county auditor in writing of that status, the address at which service may be made, and that the person should be notified of the expiration of the period of redemption in connection with any private sale of the property.

In case of the sale, contract for sale, or redemption of tax deed property during January, the property must be assessed and taxed for that year, and the purchaser or redemptioner is entitled to the rental and landlord's share of crops on the property for the year. In case of the sale, contract for sale, or redemption of tax deed land after January, the property must not be assessed and taxed for that year, and the county is entitled to the rental and landlord's share of the crops on the property for the year. The proceeds realized from a sale between annual November sales must be apportioned in the same manner as the proceeds of the annual November sale.

Approved March 10, 1995

Filed March 13, 1995

# **CORRECTIONS, PAROLE, AND PROBATION**

## **CHAPTER 119**

### **HOUSE BILL NO. 1238**

(Representatives Carlisle, Froseth, Huether, Skarphol)

### **WORK RELEASE PROGRAM COSTS**

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to room and board costs for jail inmates on a work release program.

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

**SECTION 1.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

**Work release program - Room and board costs to be paid by inmate.** Any inmate who participates in a work release program shall pay the governing body of the jail or regional correction center for the room and board costs incurred by the inmate while confined in the jail or regional correction center. The jail administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount may not exceed ten dollars per day or the funds earned by the inmate, whichever is less.

Approved March 21, 1995

Filed March 21, 1995

**CHAPTER 120****HOUSE BILL NO. 1027**

(Legislative Council)

(Interim Budget Committee on Government Finance)

(Representatives Hausauer, Howard, Boucher)

(Senators Nalewaja, Streibel, Tomac)

**YOUTH CORRECTIONAL FACILITY NAME CHANGE**

AN ACT to provide for the sentencing of offenders to the custody of the department of corrections and rehabilitation and to rename the state industrial school the North Dakota youth correctional center; to create and enact a new subsection to section 1-01-49 and a new section to chapter 12-47 of the North Dakota Century Code, relating to the definition of penitentiary and the authority of the warden; to amend and reenact sections 11-15-25, 12-46-01, 12-46-13, 12-46-15, 12-46-17, 12-46-18, 12-47-11, 12-47-12, 12-47-17, 12-47-21, 12-48-01, 12-55-31, 12-59-16, 12-1-32-02, 19-03.1-23, subsection 5 of section 27-20-31, section 27-20-32, subsection 2 of section 27-20-36, subsection 2 of section 27-20-37, and section 44-04-04 of the North Dakota Century Code, relating to commitment of offenders to custody of the department of corrections and rehabilitation; and to repeal chapter 12-51 of the North Dakota Century Code, relating to the Missouri River correctional center.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Commitment of offenders to department of corrections and rehabilitation - Place of confinement.**

1. If a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the department of corrections and rehabilitation.
2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of diagnosis and study, treatment, and rehabilitation, as best fits the needs of the inmate and for the protection and welfare of the community and the inmate.

<sup>59</sup> **SECTION 2.** A new subsection to section 1-01-49 of the North Dakota Century Code is created and enacted as follows:

"Penitentiary" includes any affiliated facilities.

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<sup>59</sup> Section 1-01-49 was also amended by section 1 of Senate Bill No. 2344, chapter 55, and section 1 of Senate Bill No. 2343, chapter 103.

**SECTION 3. AMENDMENT.** Section 11-15-25 of the North Dakota Century Code is amended and reenacted as follows:

**11-15-25.** Fees for transporting persons committed to penitentiary custody of department of corrections and rehabilitation or state hospital. A sheriff or his ~~the~~ sheriff's deputy shall receive for transporting persons committed to the penitentiary custody of the department of corrections and rehabilitation or to the state hospital the mileage prescribed in this chapter. The sheriff or his deputy; ~~however,~~ shall utilize the least expensive method of transportation, and the mileage allowed ~~shall~~ must be based only upon the use of ~~such~~ the least expensive method of transportation and ~~shall~~ may be paid only after the filing with the county auditor of an itemized statement verified by affidavit showing the mileage traveled, the manner in which traveled, the days traveled, and the purpose of the travel and showing that the method of travel was the least expensive method of transportation. ~~Such~~ The county auditor shall submit the statement and affidavit ~~shall be submitted~~ to the board of county commissioners ~~and such claims shall be~~. ~~The county auditor may not pay the claim until the claim is approved by such the board before the same shall be allowed or paid.~~

**SECTION 4. AMENDMENT.** Section 12-46-01 of the North Dakota Century Code is amended and reenacted as follows:

**12-46-01.** ~~Industrial school~~ Youth correctional center - Location - Purpose - Name. The North Dakota ~~industrial school~~ youth correctional center ~~shall~~ must be located at the city of Mandan in the county of Morton; ~~and shall be~~. The North Dakota youth correctional center is the general reform and industrial school correctional facility of the state for the detention, instruction, and reformation of juveniles of both sexes who are committed to it according to law.

**SECTION 5. AMENDMENT.** Section 12-46-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12-46-13.** Who may be sent to ~~state industrial school~~ North Dakota youth correctional center - Court procedure. Whenever a person under the age of eighteen years is found guilty in any district court of a crime or public offense; ~~the court may in its discretion order the person be first committed and subsequently placed in the custody of the department of corrections and rehabilitation, the department may transfer the person to the state industrial school~~ North Dakota youth correctional center; however, the ~~court~~ department shall ~~order that the person be first committed transfer that person to the state industrial school~~ North Dakota youth correctional center if the person is under sixteen years of age. A person so committed ~~attaining~~ who attains the age of eighteen years must be transferred to a penal institution or detention facility to serve the balance of the person's sentence. A person so committed who attains the age of sixteen years may be transferred after the person has been given an administrative hearing to determine if the safety of other residents or the general public justifies the transfer. A person sentenced under this section has all the rights to sentence reduction for good and meritorious conduct and all the pardon and parole rights of an adult sentenced to imprisonment in a penal institution.

**SECTION 6. AMENDMENT.** Section 12-46-15 of the North Dakota Century Code is amended and reenacted as follows:

**12-46-15.** Contents of order of commitment. Every order of commitment to ~~the North Dakota industrial school~~ the custody of the division of juvenile services grants full authority for treatment and transfer of any student to the administrators

of the ~~industrial school~~ North Dakota youth correctional center as provided by law, however, every order of commitment ~~shall~~ must specify the date, as near as may be ascertained by the juvenile court, at which the accused will attain majority. The date so ascertained and specified ~~shall be~~ is conclusive for all purposes connected with the ~~North Dakota industrial school~~ youth correctional center. The committing judge shall make available to the ~~North Dakota industrial school~~ division all pertinent data, reports, evaluations, and documents in the court's possession with respect to the child at the time of commitment or immediately thereafter.

**SECTION 7. AMENDMENT.** Section 12-46-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-46-17. Incurrable student returned to sheriff - Original proceedings continued. If any person who has been convicted of a felony and is committed to the custody of the division of juvenile services and transferred to the North Dakota ~~industrial school~~ shall be youth correctional center is or ~~become~~ becomes incurrable and manifestly or persistently dangerous to the good order, government, and welfare of ~~such school~~ the center or ~~the its~~ the students thereof, the director of the division of juvenile services must ~~shall~~ order ~~such~~ the person returned and delivered to the sheriff of the county from which ~~he was~~ committed, and the proceedings against ~~such~~ the person thereafter must be resumed and continued as though no order or warrant of commitment to the ~~North Dakota industrial school~~ had been made.

**SECTION 8. AMENDMENT.** Section 12-46-18 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-46-18. Employment and compensation of persons committed. Every person committed to the custody of the division of juvenile services and transferred to the ~~state industrial school~~ North Dakota youth correctional center or its auxiliary facilities may receive a stipend as determined by the superintendent, and approved by the director of the division of juvenile services, within the limits of appropriations made by the legislative assembly for such purpose.

**SECTION 9. AMENDMENT.** Section 12-47-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-11. Powers and duties of warden. The warden, under the direction of the director of the division of adult services, shall have the charge, custody, and control of the penitentiary and the persons ~~committed thereto~~ imprisoned in the penitentiary, together with all lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining ~~thereto~~ to the penitentiary or within the premises thereof; ~~excluding the crime bureau building officer's quarters, and control, maintenance, and management of said crime bureau building which must solely be under the direction of the director of the department of corrections and rehabilitation of the penitentiary.~~ The warden shall superintend and be responsible for the policing of the penitentiary and the discipline of the inmates.

**SECTION 10. AMENDMENT.** Section 12-47-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-12. Warden to make rules ~~and regulations~~. The warden, subject to the approval of the director of the division of adult services, shall make rules ~~and regulations~~ not in conflict with the laws of this state and shall prescribe penalties for the violation ~~thereof~~ of the rules:

1. For the admission of visitors, but admission of visitors may not be limited to less than four days in each week.
2. For the government of officers and employees of the penitentiary.
3. For the conduct of ~~prisoners committed to~~ persons imprisoned in the state penitentiary.

A printed copy of the rules ~~and regulations~~ must be furnished to each person ~~committed to imprisoned in~~ the penitentiary at the time of admission and to each official or employee ~~thereof of the penitentiary~~ at the time of hire. Two copies of ~~such the~~ rules must be furnished to the state law library for the use of the state officials and the public. ~~Such The~~ rules must be explained to a prisoner who cannot read English.

**SECTION 11. AMENDMENT.** Section 12-47-17 of the North Dakota Century Code is amended and reenacted as follows:

12-47-17. Warden to receive persons ~~sentenced to penitentiary committed to department of corrections and rehabilitation~~ - Records to be kept. The warden shall receive any person who has been convicted ~~and sentenced, committed to the custody of the department of corrections and rehabilitation, and assigned to the penitentiary when such that~~ person has been delivered to ~~him the warden~~ together with a copy of the judgment and sentence of the court ordering the ~~imprisonment commitment to the custody of the department.~~ The warden, immediately upon the receipt of any person ~~committed assigned by the department~~ to the penitentiary, shall enter in a book kept by ~~him the warden~~ for that purpose, and as an official record of the penitentiary, the name, age, sex, color, height, nationality, and every other fact, characteristic, and condition, natural or artificial, that in any way may tend to aid in the identification of ~~such the~~ person. After an intake, evaluation, and classification process, the warden shall assign the inmate to a correctional facility or other placement.

**SECTION 12. AMENDMENT.** Section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

12-47-21. Alcoholic beverages and controlled substances prohibited - Physician's orders - Use of tobacco - Penalty.

1. ~~No alcoholic beverages or controlled substances shall be brought into the penitentiary or upon the grounds thereof, nor be delivered to an inmate thereof, except by the direction in writing of the penitentiary physician noted in his medical records. It is unlawful for any person to deliver or administer, whether or not for a consideration, any alcoholic beverage or controlled substance to any inmate of the penitentiary, or to any other person for redelivery to an inmate of the penitentiary. This subsection does not apply to the delivery or administration of controlled substances or alcoholic beverages in accordance with the orders or prescription of a duly licensed physician and the approval, except in emergency circumstances, of the warden.~~
2. ~~No inmate shall possess any controlled substance or alcoholic beverage, unless it has been prescribed by the penitentiary physician and noted in his medical records. No penitentiary inmate may possess any controlled substance or alcoholic beverage unless the substance or beverage was~~

delivered to the inmate or was possessed in accordance with the prescription or orders of a licensed physician.

3. No alcoholic beverages or other articles of indulgence shall be allowed any inmate except by order of the physician; such order to be in writing and for a definite and limited period. The warden may make a moderate allowance of tea, coffee, or tobacco to inmates as a reward for industry and good behavior. Any person, other than an official or employee of the penitentiary, who violates subsection 1 by delivering or administering a controlled substance is guilty of a class B felony. Any official or employee of the penitentiary who violates subsection 1 by delivering or administering a controlled substance is guilty of a class A felony. Any person who violates subsection 1 by delivering alcoholic beverages is guilty of a class A misdemeanor.
4. Any person, other than an official or employee of the penitentiary or state hospital, violating the provisions of subsection 1 by bringing in or delivering a controlled substance shall be guilty of a class B felony. Any official or employee of the penitentiary or state hospital who violates subsection 1 by bringing in or delivering a controlled substance is guilty of a class A felony. Any person otherwise violating the provisions of subsection 1 shall be guilty of a class A misdemeanor. Any inmate violating the provisions of subsection 2 shall be guilty of a class B felony; and any sentence of imprisonment imposed shall run consecutively to any sentence which the offender may currently be serving. Any person who violates subsection 2 by possessing a controlled substance is guilty of a class B felony. Any person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.
5. As used in this section, "controlled substance" is as defined in subsection 4 6 of section 19-03.1-01, and includes counterfeit substances as defined in subsection 5 7 of section 19-03.1-01; "penitentiary" includes those portions of the physical structures of the Jamestown state hospital which are used to house prisoners; and "inmate" means a person incarcerated in the penitentiary or the Jamestown state hospital.

SECTION 13. A new section to chapter 12-47 of the North Dakota Century Code is created and enacted as follows:

Transfer of persons between state correctional facilities. When the warden determines that for purposes of safety of other inmates or the general public or for discipline or medical care or when in the best interest of the inmate or the facility in which the inmate is housed, the warden may transfer the inmate to any facility under the warden's control.

SECTION 14. AMENDMENT. Section 12-48-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48-01. Employment of inmates. All persons sentenced to imprisonment in committed to the penitentiary and committed thereto shall department of corrections and rehabilitation may be regularly employed for the benefit of the state to the extent employment is available.

SECTION 15. AMENDMENT. Section 12-55-31 of the North Dakota Century Code is amended and reenacted as follows:

12-55-31. Duty of court reporter and clerk regarding official statements of judge and state's attorney. The court reporter, at the ~~dictation~~ direction of the judge presiding at the trial or sentencing of a person convicted of a felony, or of the state's attorney presenting the case, shall write the official statements of the judge and state's attorney described in section 12-55-30. The clerk of court with whom ~~such~~ the statements are filed shall cause copies ~~thereof~~ of the statements to be attached to the commitment, if the prisoner is committed to the ~~penitentiary~~ custody of the department of corrections and rehabilitation, or to the order suspending the sentence and placing the prisoner on probation, if the sentence is suspended. ~~Such~~ The copies ~~shall~~ must be transmitted to the penitentiary with the commitment or order suspending sentence as the case may be.

SECTION 16. AMENDMENT. Section 12-59-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-16. Execution of order of recommitment - Fees and payment thereof. The officer executing an order for the recommitment of a prisoner to the ~~penitentiary or the Missouri River correctional center~~ custody of the department of corrections and rehabilitation shall endorse a return ~~of his doings thereon on the order~~, and shall deliver the execution, a copy of the order of recommitment, and ~~his~~ the return to the warden, with the person named therein. The warden shall deliver to ~~such~~ the officer a certificate acknowledging the receipt of the person, the certified copy of the order, and the return; ~~and such certificate shall be retained by the~~. The officer making the return shall retain the certificate. The fees of an officer for executing such an order ~~shall be~~ are the same as are prescribed for the commitment of a person to the ~~penitentiary or the Missouri River correctional center~~ custody of the department under a sentence of the court, but in no case ~~shall such~~ may the fees exceed the sum of one hundred dollars.

<sup>60</sup> SECTION 17. AMENDMENT. Section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
  - a. Payment of the reasonable costs of the person's prosecution.
  - b. Probation.
  - c. A term of imprisonment, including intermittent imprisonment:
    - (1) In a state correctional facility in accordance with section 1 of this Act, in a regional corrections center, or in a county jail, or in the Missouri River correctional center in accordance

<sup>60</sup> Section 12.1-32-02 was also amended by section 3 of House Bill No. 1218, chapter 136, and section 5 of Senate Bill No. 2264, chapter 124.



~~with section 12-51-07~~, if convicted of a felony or a class A misdemeanor.

- (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
  - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
- d. A fine.
  - e. Restitution for damages resulting from the commission of the offense.
  - f. Restoration of damaged property, or other appropriate work detail.
  - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection ~~must does not be construed as not permitting~~ permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08.

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1.
5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty

additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.

6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
8. Unless otherwise specifically authorized in the statute defining the offense, a court may not include a minimum term of imprisonment as part of its sentence.
9. ~~A court may commit a female offender to the state penitentiary or other suitable facility under the same minimum security restrictions and with the same privileges as Missouri River correctional center inmates when the sentence imposed is more than thirty days but not more than one year.~~
- ~~10.~~ A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence. This subsection does not apply to a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23.
- ~~11.~~ 10. A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.
- ~~12.~~ 11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report.

**SECTION 18. AMENDMENT.** Section 19-03.1-23 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, but any person who violates section 12-46-24; or 12-47-21; ~~or 12-51-11~~ may

not be prosecuted under this subsection. Any person who violates this subsection with respect to:

- a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony and must be sentenced:
    - (1) For a first offense, to imprisonment for at least a year and a day.
    - (2) For a second offense, to imprisonment for at least five years.
    - (3) For a third or subsequent offense, to imprisonment for twenty years.
  - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
    - (1) For a first offense, to imprisonment for at least eight months.
    - (2) For a second offense, to imprisonment for at least three years.
    - (3) For a third or subsequent offense, to imprisonment for ten years.
  - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least six months.
    - (2) For a third offense, to imprisonment for at least one year.
    - (3) For a fourth or subsequent offense, to imprisonment for five years.
  - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance, but any person who violates section 12-46-24; or 12-47-21; ~~or 12-51-11~~ may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
  - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
  - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.

- d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. In addition to any other penalty imposed under this section, a person who violates this chapter, except a person who ~~manufacturers~~ manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
  - a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a four-year term of imprisonment. For a second or subsequent offense, the sentencing term required to be imposed must be eight years.
  - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least four years. For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
4. A person at least twenty-one years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled substance except marijuana is guilty of a class B felony and must be sentenced:
  - a. For the first offense, to imprisonment for at least four years.
  - b. For a second or subsequent offense, to imprisonment for at least five years.
  - c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment.
6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24; or 12-47-21; ~~or 12-51-11~~ may not be prosecuted under this subsection. Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony. If the person is in or

on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.
8. Notwithstanding section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

<sup>61</sup> **SECTION 19. AMENDMENT.** Subsection 5 of section 27-20-31 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Committing the child to the ~~state industrial school~~ division of juvenile services or to ~~a~~ another state department to which commitment of delinquent or unruly children may be made. When necessary, the commitment order may provide that the child initially be placed in a secure facility.

**SECTION 20. AMENDMENT.** Section 27-20-32 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-32. Disposition of unruly child.** If the child is found to be unruly, the court may make any disposition authorized for a delinquent child except commitment to ~~the state industrial school~~ a secure facility. If after making the disposition the court finds upon a further hearing that the child is not amenable to treatment or rehabilitation under the disposition made, it may make a disposition otherwise authorized by section 27-20-31.

**SECTION 21. AMENDMENT.** Subsection 2 of section 27-20-36 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>61</sup> Section 27-20-31 was also amended by section 14 of Senate Bill No. 2264, chapter 124.

2. An order of disposition committing a delinquent or unruly child to the ~~state industrial school~~ division of juvenile services continues in force for two years, excluding any period of time the child is on parole from ~~the~~ an institution, or until the child is sooner discharged by ~~the~~ an institution. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
  - a. A hearing is held upon motion of the ~~institution~~ division, or on the court's own motion, prior to the expiration of the order;
  - b. Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
  - c. The court finds that the extension is necessary for the treatment or rehabilitation of the child.

**SECTION 22. AMENDMENT.** Subsection 2 of section 27-20-37 of the North Dakota Century Code is amended and reenacted as follows:

2. Except ~~an order committing a delinquent or unruly child to the state industrial school~~, an order terminating parental rights, or an order of dismissal, an order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child. An order terminating parental rights and the parent and child relationship may be vacated by the court upon motion of the parent if the child is not on placement for adoption and the person having custody of the child consents in writing to the vacation of the decree. An order granting probation to a child found to be delinquent or unruly may be revoked on the ground that the conditions of probation have not been observed.

**SECTION 23. AMENDMENT.** Section 44-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-04.** Aliens convicted of felony or adjudged mentally ill. Whenever any person convicted of a felony or adjudged mentally ill is committed to the ~~penitentiary, the North Dakota industrial school~~ custody of the department of corrections and rehabilitation, a county jail, or to any other state or county institution ~~which that~~ is supported wholly or in part by public funds, the warden, superintendent, sheriff, or other officer in charge of ~~such state or county institution~~ shall inquire immediately into the nationality of ~~such that~~ person, and, if it appears that ~~such that~~ person is an alien, immediately shall notify the United States immigration officer in charge of the district in which ~~such penitentiary, industrial school, jail, or other institution~~ that person is located, of the date of and the reason for ~~such the~~ commitment, the length of time for which the alien was committed, the country of which ~~he the alien~~ is a citizen, and the date on, and the port at, which ~~he the alien~~ last entered the United States.

**SECTION 24. REPEAL.** Chapter 12-51 of the North Dakota Century Code is repealed.

**\* SECTION 25. STATUTORY REFERENCES RELATING TO THE YOUTH CORRECTIONAL CENTER.** The legislative council may replace references to the industrial school with appropriate references to the youth correctional center in the sections of law listed in this section, consistent with usages

contained in this Act. References inserted may be adjusted to suit the context and grammar of the sections and must be inserted so as to harmonize existing law with regard to the name change provided by this Act. The sections of the North Dakota Century Code to which the authority of this section applies are sections 4-05.1-14, 12-45-01, 12-45-03, 12-45-06, 12-46-01, 12-46-02, 12-46-03, 12-46-09, 12-46-10.1, 12-46-11, 12-46-12, 12-46-13, 12-46-14, 12-46-15, 12-46-16, 12-46-17, 12-46-18, 12-46-19, 12-46-22, 12-46-24, 12-46-25, 12-52-02, 12-52-03, 12-52-04, 12-52-05, 12-52-07, 12.1-32-13, 14-10-17, 15-06-01, 15-10-18.1, 15-39.1-04, 15-59-05.1, 18-08-12, 20.1-03-04, 27-21-02, 27-21-03, 27-21-11, 44-04-04, 50-06-05.1, 54-14-03.2, 54-23-22, and 54-23.3-01.

**SECTION 26. MEASURES ENACTED BY THE FIFTY-FOURTH LEGISLATIVE ASSEMBLY RELATING TO THE YOUTH CORRECTIONAL FACILITY.** The legislative council may insert appropriate references in any measure enacted by the fifty-fourth legislative assembly which refers to the terms "North Dakota industrial school" or "state industrial school" consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name changes provided by this Act.

Approved April 7, 1995

Filed April 7, 1995

\* SECTION 25 was affected as follows:

Section 4-05.1-14 was repealed by section 44 of Senate Bill No. 2070, chapter 54.

Section 12-45-01 was also amended by section 5 of Senate Bill No. 2482, chapter 114.

Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2170, chapter 191; section 5 of Senate Bill No. 2491, chapter 186; and section 10 of Senate Bill No. 2012, chapter 34.

Section 15-59-05.1 was also amended by section 10 of Senate Bill No. 2012, chapter 34.

Section 20.1-03-04 was also amended by section 2 of House Bill No. 1058, chapter 243, and section 10 of Senate Bill No. 2012, chapter 34.

Section 50-06-05.1 was also amended by section 3 of House Bill No. 1074, chapter 457; section 1 of Senate Bill No. 2216, chapter 460; sections 10 and 14 of Senate Bill No. 2012, chapter 34; and section 6 of Senate Bill No. 2439, chapter 461.

Section 54-14-03.2 was also amended by section 10 of Senate Bill No. 2012, chapter 34.

## CHAPTER 121

## HOUSE BILL NO. 1082

(Representative Rydell)

(Senator O'Connell)

(At the request of the Department of Corrections and  
Rehabilitation)

## INMATE PENITENTIARY ACCOUNTS

AN ACT to create and enact a new subsection to section 12-59-15 of the North Dakota Century Code, relating to the breach of parole; and to amend and reenact subsection 4 of section 12-48-15, section 12-48-20, and subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code, relating to disposition of moneys earned by inmates and definitions relating to escape.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12-48-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The warden, through the staff, is responsible for guiding inmates in making proper use of their funds to pay their obligations, including the payment of court costs, court-appointed counsel fees, and court-ordered restitution, and to provide for their dependent relatives or to provide for their own medical, surgical, or dental treatment or services not generally provided by the state. The warden may withdraw funds from an inmate's penitentiary account or Bank of North Dakota two-signature account, without the inmate's signature, to meet the inmate's legitimate financial obligations. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a penitentiary administrative hearing with the right to penitentiary staff assistance and the right to appeal to the director of the department of corrections and rehabilitation. The sum of money as provided by penitentiary rules from each inmate's earnings required to be deposited and accumulated by this section is not available to the inmate until discharge, unless authorized by the warden. The remainder of the inmate's earnings, including interest earned, is available to the inmate under the supervision and control of the warden or designee.

SECTION 2. AMENDMENT. Section 12-48-20 of the North Dakota Century Code is amended and reenacted as follows:

12-48-20. Disposition of earnings of prisoner who escapes or violates parole. The money to the credit of any in a prisoner's penitentiary or Bank of North Dakota two-signature account or any property belonging to a prisoner who escapes or violates his the prisoner's parole shall be forfeited and used to pay the expense of his the prisoner's apprehension and capture. If the escaped prisoner or parole violator is not apprehended and captured within one year from the date of his escape, the money to his credit shall be forfeited and turned into the credit of the prisoners' general benefit fund. If the escaped prisoner or parole violator is apprehended and captured at any time after the expiration of one year, the money to



his credit which has been transferred to the prisoners' general benefit fund shall revert from this fund to pay for the expense of his apprehension and capture. Any of the prisoner's funds or property that is not required to pay for the prisoner's apprehension and return to the penitentiary may be transferred by the warden into the penitentiary inmate betterment fund.

SECTION 3. A new subsection to section 12-59-15 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

When the board determines the parolee has violated subsection 2, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

SECTION 4. AMENDMENT. Subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility, but "official detention" does not include supervision on probation or parole or constraint incidental to release.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 122****HOUSE BILL NO. 1140**

(Representative Kretschmar)

(Senator W. Stenehjem)

(At the request of the Department of Corrections and  
Rehabilitation)**PARDON DEFINED**

AN ACT to create and enact a new section to chapter 12-55 of the North Dakota Century Code, relating to the definition of pardon.

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

**SECTION 1.** A new section to chapter 12-55 of the North Dakota Century Code is created and enacted as follows:

**Pardon - Definition.** A pardon is the removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove the fact of that person's conviction or plea or finding of guilt for the offense unless specifically stated in the certificate of pardon.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 123

### SENATE BILL NO. 2263

(Senators W. Stenehjem, Tallackson, Traynor)  
(Representatives Hagle, Kelsch, Mahoney)

## FINGERPRINT AUTOMATED IDENTIFICATION SYSTEM

AN ACT to create and enact a new section to chapter 12-60 of the North Dakota Century Code, relating to an automated fingerprint identification system by the bureau of criminal investigation.

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

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

**Automated fingerprint identification system.** The bureau may establish and maintain an automated fingerprint identification system for this state. The bureau may cooperate with other states for the operation of a regional automated fingerprint identification system.

Approved March 21, 1995

Filed March 23, 1995

# CRIMINAL CODE

## CHAPTER 124

### SENATE BILL NO. 2264

(Senator W. Stenehjem)

(Representative Wilkie)

## CRIMINAL STREET GANGS

AN ACT to create and enact a new chapter to title 12.1, a new subsection to section 12.1-34-02, a new section to chapter 26.1-40, four new sections to chapter 27-20, a new subsection to section 27-20-31, and a new section to chapter 39-06 of the North Dakota Century Code, relating to criminal street gangs and street crime, fair treatment of victims and witnesses in juvenile court proceedings, a juvenile's suspension of driving privileges, suspension of driving privileges by delinquent children, juvenile court's exercise of contempt authority over parents ordered to participate in the treatment of a child, authority of the juvenile court to order the parents of a juvenile adjudicated delinquent to make restitution to the victim, disclosure of identifying information about a juvenile, disposition of a delinquent child, and a juvenile delinquent's suspension of driving privileges; to amend and reenact subsections 1 and 2 of section 12.1-06.1-01, sections 12.1-06.1-02 and 12.1-06.1-03, subsection 1 of section 12.1-32-02, subsection 5 of section 27-20-02, sections 27-20-26, 27-20-34, 27-20-51, 27-20-52, 27-20-53, and 62.1-02-01 of the North Dakota Century Code, relating to criminal associations and racketeering, leading a criminal association, illegal control of an enterprise, sentencing alternatives, definition of a deprived child, right to counsel for juveniles under the Uniform Juvenile Court Act, transfer of juveniles to other courts, inspection of court files and records, law enforcement records, fingerprinting and photographing of juveniles, and possession of firearms; to repeal section 29-01-28 of the North Dakota Century Code, relating to exclusion of spectators from trials of minors; and to provide a penalty.

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

**SECTION 1.** A new chapter to title 12.1 of the North Dakota Century Code is created and enacted as follows:

#### Definitions. As used in this chapter, the term:

1. "Crime of pecuniary gain" means any violation of state law that directly results or was intended to result in the defendant alone, or in association with others, receiving income, benefit, property, money, or anything of value.
2. "Crime of violence" means any violation of state law where a person purposely or knowingly causes or threatens to cause death or physical bodily injury to another person or persons.

3. "Criminal street gang" means any ongoing organization or group of three or more persons, whether formal or informal, that acts in concert or agrees to act in concert with a purpose that any of those persons alone or in any combination commit or will commit two or more predicate gang crimes one of which occurs after the date of enactment of this Act and the last of which occurred within five years after the commission of a prior predicate gang crime.
4. "Participate in a criminal street gang" means to act in concert with a criminal street gang with intent to commit or with the intent that any other person associated with the criminal street gang will commit one or more predicate gang crimes.
5. "Predicate gang crime" means the commission, attempted commission, or solicitation of any felony, misdemeanor crime of violence, or misdemeanor crime of pecuniary gain.

Criminal street gang crime - Penalty. Any person who commits a felony or class A misdemeanor crime of violence or crime of pecuniary gain for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal gang, or obtain membership into a criminal gang, is guilty of a class C felony.

Encouraging minors to participate in criminal street gang - Penalty.

1. Any person eighteen years of age or older who knowingly or willfully causes, aids, abets, encourages, solicits, or recruits a person under the age of eighteen years to participate in a criminal street gang is upon conviction guilty of a class C felony.
2. Nothing in this section may be construed to limit prosecution under any other provision of law.

Local ordinances not preempted. Nothing in this chapter may be construed as preventing a local governing body from adopting and enforcing ordinances relating to gangs and gang-related violence.

**SECTION 2. AMENDMENT.** Subsections 1 and 2 of section 12.1-06.1-01 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. For the purpose of section 12.1-06.1-02:
  - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal ~~syndicate~~ association even though such persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.
  - b. "Criminal ~~syndicate~~ association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state.

2. For the purposes of sections 12.1-06.1-03 through 12.1-06.1-07, unless the context otherwise requires:
- a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
  - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
  - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or money lender under the jurisdiction of the state department of banking and financial institutions or its commissioner, or the state banking board, or the state credit union board.
  - d. "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
  - e. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
    - (1) Homicide.
    - (2) Robbery.
    - (3) Kidnapping.
    - (4) Forgery.
    - (5) Theft.
    - (6) Bribery.
    - (7) Gambling.
    - (8) Usury.
    - (9) Extortion.
    - (10) ~~Dealing in narcotic drugs or dangerous drugs.~~ Unlawful delivery of controlled substances.
    - (11) Trafficking in explosives, weapons, or stolen property.
    - (12) Leading ~~organized crime~~ a criminal association.

- (13) Obstructing or hindering criminal investigations or prosecutions.
- (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
- (15) Fraud.
- (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
- (17) Obscenity.
- (18) Child pornography.
- (19) Prostitution.

f. "Records" means any book, paper, writing, record, computer program, or other material.

**SECTION 3. AMENDMENT.** Section 12.1-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-06.1-02. Leading ~~organized crime~~ a criminal association - Classification.**

1. A person ~~commits leading organized crime~~ is guilty of an offense by any of the following:
  - a. Intentionally organizing, managing, directing, supervising, or financing a criminal ~~syndicate~~ association.
  - b. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of a criminal ~~syndicate~~ association.
  - c. ~~Furnishing~~ Willfully furnishing advice, assistance, or direction in the conduct, financing, or management of a criminal ~~syndicate's~~ association's affairs with the intent to promote or further the criminal objectives of a ~~syndicate~~ criminal association.
  - d. Intentionally promoting or furthering the criminal objectives of a ~~syndicate~~ criminal association by inducing or committing any act or omission by a public servant in violation of ~~his~~ official duty.
2. No person shall be convicted pursuant to this section on the basis of accountability as an accomplice unless ~~he~~ that person aids or participates in violating this section in one of the ways specified.
3. Leading organized crime is a class B felony.

**SECTION 4. AMENDMENT.** Section 12.1-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-06.1-03. Illegal control of an enterprise - Illegally conducting an enterprise.**

1. A person is ~~in illegal control of an enterprise~~ guilty of an offense if such person, through a pattern of racketeering activity or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.
2. A person is ~~illegally conducting an enterprise~~ guilty of an offense if the person is employed or associated with any enterprise and conducts or participates in the conduct of that enterprise's affairs through a pattern of racketeering activity.
3. A knowing violation of this section is a class B felony.

<sup>62</sup> SECTION 5. AMENDMENT. Subsection 1 of section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
  - a. Payment of the reasonable costs of the person's prosecution.
  - b. Probation.
  - c. A term of imprisonment, including intermittent imprisonment:
    - (1) In a state correctional facility, a regional corrections center, a county jail, or in the Missouri River correctional center in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.
    - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
    - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
    - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections.
  - d. A fine.
  - e. Restitution for damages resulting from the commission of the offense.

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<sup>62</sup> Section 12.1-32-02 was also amended by section 3 of House Bill No. 1218, chapter 136, and section 17 of House Bill No. 1027, chapter 120.



- f. Restoration of damaged property, or other appropriate work detail.
- g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection must not be construed as not permitting the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08.

**SECTION 6.** A new subsection to section 12.1-34-02 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Victims and witnesses of crimes committed by juveniles are entitled to the same rights under this chapter in juvenile delinquency proceedings as in any other proceeding. In addition, every victim or a witness who is a minor is entitled to have that person's spouse, parent, guardian, and no more than two other designated adults present with that person during any juvenile delinquency proceedings.

**SECTION 7.** A new section to chapter 26.1-40 of the North Dakota Century Code is created and enacted as follows:

Juvenile's suspension of driving privileges - Nontraffic delinquent conduct. Insurers are prohibited from using or relying on a nontraffic delinquent juvenile's suspension of driving privileges under section 9 of this Act as a reason for canceling, denying, or nonrenewing the automobile insurance policy of the nontraffic delinquent juvenile offender or the parents of the nontraffic delinquent juvenile offender.

<sup>63</sup> **SECTION 8. AMENDMENT.** Subsection 5 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

5. "Deprived child" means a child who:

- a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
- b. Has been placed for care or adoption in violation of law;
- c. Has been abandoned by the child's parents, guardian, or other custodian; ~~or~~

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<sup>63</sup> Section 27-20-02 was also amended by section 1 of House Bill No. 1151, chapter 299.

- d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent; or
- e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court.

**SECTION 9.** A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Delinquent children - Suspension of driving privileges.

- 1. If a juvenile is adjudicated delinquent of an offense that would be a class A misdemeanor or a felony if the offense were committed by an adult, the juvenile court may order the suspension of the juvenile's driving privileges for a period of up to six months for the first offense. For a second or subsequent offense, the juvenile court may order the suspension of the juvenile's driving privileges for up to one year. As a condition to the return of driving privileges, the juvenile court may order the successful completion of an appropriate driver's examination.
- 2. When the juvenile court orders the suspension of a juvenile's driving privileges, the juvenile court shall immediately take possession of the juvenile's driver's license or permit and send copies of the court's order to the director of the department of transportation who shall make notation of the juvenile's suspension of driving privileges.
- 3. The record of the juvenile's suspension of driving privileges under this section must be kept confidential and may not be released except to law enforcement personnel in connection with law enforcement activities. The record of a juvenile's suspension of driving privileges under this section may not be disclosed to or shared with the licensing officials of any other state or jurisdiction. At the end of the six-month or one-year period, the director shall remove and destroy all record of the juvenile's suspension of driving privileges under this section.
- 4. This section may not be construed to limit consensual agreements between the juvenile court and the juvenile restricting the driving privileges of the juvenile.

**SECTION 10.** A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Orders directed to parents or guardians. It is the policy of this state that every parent or guardian has an obligation to participate in any treatment of the parent's or guardian's child as ordered by the juvenile court. The juvenile court may hold any parent or guardian who willfully fails to participate in the treatment in contempt of court.

**SECTION 11.** A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Restitution.

1. a. In addition to a child being ordered to make restitution under section 27-20-31, a parent of a child adjudged delinquent may be ordered to make restitution on the child's behalf in an amount not exceeding five thousand dollars.
  - b. Prior to ordering parental restitution under this section, the court shall hold a hearing on the matter with notice given to all interested parties as to the nature and amount of the parental restitution. In determining whether to order parental restitution, the court must take the following factors into account:
    - (1) The ability of the parent or parents to pay monetary restitution and the care and control exercised by the parents.
    - (2) The ability of the child to pay monetary restitution.
    - (3) Whether ordering parental restitution would detract from the child's treatment, rehabilitation, or welfare.
    - (4) The number of delinquent acts, if any, previously committed by the child.
  - c. A parental order of restitution must be limited to those damages directly related to the delinquent act and expenses actually incurred as a result of the delinquent act.
2. Unless the court directs otherwise, any order of restitution under this section or section 27-20-31 may be filed, transcribed, and enforced by the person entitled to the restitution in the same manner as civil judgments rendered by the courts of this state may be enforced. A child against whose parents a judgment may be entered under this section is jointly and severally liable with that child's parents for the amounts up to five thousand dollars and solely liable for any amounts over that amount. Any judgment rendered under this section may not be discharged in bankruptcy and is not subject to the statutes of limitation provided for in chapter 28-01 and the judgment may not be canceled under section 28-20-35.

**SECTION 12.** A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Disclosure of information needed to apprehend juvenile. Notwithstanding any other provision of law, the name, photographs, fingerprints, or other identifying information of a juvenile who is alleged to have committed a delinquent act involving actual or threat of serious bodily injury that would constitute a felony if committed by an adult or who has escaped or left without authorization from a secure facility may be released by law enforcement or the juvenile court for purposes of apprehending the juvenile.

**SECTION 13. AMENDMENT.** Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-26. Right to counsel.**

1. Except as otherwise provided under this chapter, a party is entitled to representation by legal counsel at ~~all~~ custodial, post-petition, and informal adjustment stages of ~~any~~ proceedings under this chapter and, if as a needy person ~~he~~ the party is unable to employ counsel, to have the court provide counsel for ~~him~~ the party. If a party appears without counsel the court shall ascertain whether ~~he~~ the party knows of ~~his~~ the party's right ~~thereto~~ to counsel and to be provided with counsel by the court if ~~he~~ the party is a needy person. The court may continue the proceeding to enable a party to obtain counsel and shall provide counsel for an unrepresented needy person upon ~~his~~ the person's request. Counsel must be provided for a child not represented by ~~his~~ the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. A needy person is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child is not to be considered needy under this section if ~~his~~ the child's parents or parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent entitled to the custody of a child involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for their child. The court may enforce performance of this duty by appropriate order. As used in this subsection, the word "parent" includes adoptive parents.

<sup>64</sup> SECTION 14. A new subsection to section 27-20-31 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Under section 9 of this Act, order the driver's license or permit of the child be delivered to the juvenile supervisor, probation officer, or other appropriate officer of the court and to inform the director of the department of transportation of the child's suspension of driving privileges and the duration of the suspension of privileges.

SECTION 15. AMENDMENT. Section 27-20-34 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-34. Transfer to other courts.**

1. After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on its merits ~~may~~ shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:

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<sup>64</sup> Section 27-20-31 was also amended by section 19 of House Bill No. 1027, chapter 120.

- a. The child is over sixteen or more years of age and requests the transfer; ~~or~~
- b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or
- c.
  - (1) The child was fourteen or more years of age at the time of the alleged conduct;
  - (2) A hearing on whether the transfer should be made is held in conformity with sections 27-20-24, 27-20-26, and 27-20-27;
  - (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and ~~his~~ the child's parents, guardian, or other custodian at least three days before the hearing; and
  - (4) The court finds that there are reasonable grounds to believe that:
    - (a) The child committed the delinquent act alleged;
    - (b) The child is not amenable to treatment or rehabilitation as a juvenile through available programs;
    - (c) The child is not treatable in an institution for the mentally retarded or mentally ill;
    - (d) The interests of the community require that the child be placed under legal restraint or discipline; and
    - (e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.
2. The burden of proving reasonable grounds to believe that a child is amenable to treatment or rehabilitation as a juvenile through available programs is on the child in those cases in which the alleged delinquent act involves the offense of manslaughter, aggravated assault, robbery, arson involving an inhabited structure, or escape involving the use of a firearm, destructive device, or other dangerous weapon or in those cases where the alleged delinquent act involves an offense which if committed by an adult would be a felony and the child has two or more previous delinquency adjudications for offenses which would be a felony if committed by an adult.
3. In determining a child's amenability to treatment and rehabilitation, the court shall consider and make specific findings on the following factors:
  - a. Age;

- b. Mental capacity;
  - c. Maturity;
  - d. Degree of criminal sophistication exhibited;
  - e. Previous record;
  - f. Success or failure of previous attempts to rehabilitate;
  - g. Whether the juvenile can be rehabilitated prior to expiration of juvenile court jurisdiction;
  - h. Any psychological, probation, or institutional reports;
  - i. The nature and circumstances of the acts for which the transfer is sought;
  - j. The prospect for adequate protection of the public; and
  - k. Any other relevant factors.
4. The transfer terminates the jurisdiction of the juvenile court over the child with respect to the delinquent acts alleged in the petition. In addition, any transfer under subdivisions b or c of subsection 1 operates to terminate the juvenile court's jurisdiction over the child with respect to any future offense if the child is ultimately convicted of the offense giving rise to the transfer.
- 3- 5. No child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.
- 4- 6. Statements made by the child at the hearing under this section are not admissible against ~~him~~ the child over objection in the criminal proceedings following the transfer except for impeachment.
- 5- 7. If the case is not transferred, the judge who conducted the hearing may not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also a judge, ~~he~~ the judge likewise is disqualified over objection from presiding in the prosecution.

<sup>65</sup> **SECTION 16. AMENDMENT.** Section 27-20-51 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**27-20-51. Inspection of court files and records.**

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<sup>65</sup> Section 27-20-51 was also amended by section 1 of Senate Bill No. 2093, chapter 303, and section 1 of Senate Bill No. 2090, chapter 304.

1. Except as provided in ~~subsection 2~~ this section, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are ~~confidential and may not be disclosed~~ closed to the public. Such files and records are open to inspection only by:
  - a. The judge and staff of the juvenile court.
  - b. The parties to the proceeding or their counsel or guardian ad litem of any party.
  - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
  - d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court.
  - e. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 54-23.4.
2. Such files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:
  - a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
  - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.
3. In a proceeding under this chapter, if the juvenile court finds that a child committed a delinquent or unruly act which constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall, within ten days, report the finding to the director of the department of transportation.
4. Following an adjudication of delinquency for an offense that would be a felony if committed by an adult, the juvenile's school principal, chief administrative officer, or designated school guidance counselor, if requested, must be allowed access to the disposition order.
5. Following an adjudication of delinquency for an offense that results in the prohibitions included in subsection 1 or 2 of section 62.1-02-01, if

requested, a law enforcement officer must be allowed access to the disposition order.

6. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release of general information upon request not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. However, upon a third adjudication of delinquency involving an offense which if committed by an adult would constitute a felony and upon a second adjudication of delinquency involving an offense defined in sections 12.1-20-03, 12.1-20-04, or 12.1-20-07, the name of the juvenile adjudicated delinquent may be disclosed.

**SECTION 17. AMENDMENT.** Section 27-20-52 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**27-20-52. Law enforcement records.** Law enforcement records and files concerning a child must be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files may not be open to public inspection ~~or their contents disclosed to the public~~; but inspection of the records and files is permitted by:

1. A juvenile court having the child before it in any proceeding;
2. Counsel for a party to the proceeding;
3. The officers of public institutions or agencies to whom the child is committed;
4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
5. A court in which ~~he~~ the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which ~~he~~ the child is committed, or by a parole or pardon board in considering ~~his~~ the child's parole or discharge or in exercising supervision over ~~him~~ the child; and
6. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 54-23.4.

Notwithstanding that law enforcement records concerning a child are not open to public inspection, nothing in this section may be construed to limit the release of general information not identifying the identity of the child.

**SECTION 18. AMENDMENT.** Section 27-20-53 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-53. Children's fingerprints, photographs.**

1. No child under fourteen years of age may be fingerprinted in the investigation of a crime except as provided in this section. Fingerprints



of a child ~~fourteen or more years of age~~ who is referred to the court may be taken and filed by law enforcement officers in investigating the commission of the following crimes: murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, ~~and theft, forgery, and unlawful possession or use of a handgun.~~

2. Fingerprint files of children must be kept separate from those of adults. Copies of fingerprints known to be those of a child ~~must be maintained on a local basis only and not sent to a central state or may be maintained locally and copies may be sent to a central state depository but may not be sent to a federal depository unless needed in the interest of national security.~~
3. Fingerprint files of children may be inspected by law enforcement officers when necessary for the discharge of their official duties. Other inspections may be authorized by the court in individual cases upon a showing that it is necessary in the public interest.
4. Fingerprints of a child ~~must be considered a part of the child's juvenile or adult investigative file and must be removed from the file state and local files and destroyed if:~~
  - a. ~~A petition alleging delinquency is not filed; or the proceedings are dismissed after either a petition is filed or the case is transferred to the juvenile court as provided in section 27-20-09; or the child is adjudicated not to be a delinquent child; or~~
  - b. ~~The child reaches eighteen years of age and there is no record that he committed a criminal offense after reaching sixteen years of age in accordance with section 27-20-54.~~
5. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe that they are those of a particular child, ~~he the officer~~ may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken must be immediately destroyed. ~~If the comparison is positive and the child is referred to the court, the fingerprint card and other copies of the fingerprints taken must be delivered to the court for disposition.~~ If the child is not referred to the court, the fingerprints must be immediately destroyed.
6. ~~Without the consent of the judge, a~~ A child may not be photographed after he is taken into custody unless the case is transferred to another court for prosecution: by a law enforcement officer at the time of arrest for the crimes of murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, theft, forgery, or unlawful possession or use of a handgun. The photograph must be destroyed if the child is not referred to the juvenile court. If a court finds facts that would justify a finding that a child at least fourteen years of age at the time of the offense is delinquent and the finding involves the unlawful use or possession of a handgun or the commission of an act proscribed by the criminal laws of this state and punishable as a felony or a class A misdemeanor committed for the benefit of, at the direction of, or in association or affiliation with any criminal street gang, with the intent to promote, further, or assist in the activities of a criminal gang, the

juvenile court shall order upon the request of the state's attorney the taking and retention of a photograph of the child for purposes of identification. Photographs of children under this subsection may be maintained on a local basis and sent to a central state depository but must be maintained separate from those of adults and must be destroyed in accordance with section 27-20-54.

**SECTION 19.** A new section to chapter 39-06 of the North Dakota Century Code is created and enacted as follows:

Juvenile delinquent's suspension of driving privileges. Upon receipt of a copy of an order of a juvenile court ordering the suspension of a juvenile's driving privileges, the director shall suspend the juvenile's driver's license or permit and make notation of the length of time of the suspension of driving privileges. During the time of the juvenile's suspension of driving privileges, no application for a driver's permit may be accepted from the juvenile.

**SECTION 20. AMENDMENT.** Section 62.1-02-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**62.1-02-01. Who not to possess firearms - Penalty.**

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or

deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, ~~or~~ the defendant's conviction has been reduced in accordance with subsection 10 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2.

**SECTION 21. REPEAL.** Section 29-01-28 of the North Dakota Century Code is repealed.

Approved April 18, 1995

Filed April 18, 1995

## CHAPTER 125

## SENATE BILL NO. 2130

(Judiciary Committee)

(At the request of State Radio Communications)

## HARASSING 911 EMERGENCY TELEPHONE CALLS

AN ACT to amend and reenact section 12.1-17-07 of the North Dakota Century Code, relating to annoying or harassing emergency telephone calls; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-07. Harassment.

1. A person is guilty of an offense if, with intent to frighten or harass another, he:
  - a. Communicates in writing or by telephone a threat to inflict injury on any person, to any person's reputation, or to any property;
  - b. Makes a telephone call anonymously or in offensively coarse language;
  - c. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
  - d. Communicates a falsehood in writing or by telephone and causes mental anguish.
2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.
3. Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made, or at the place where the telephone call or calls were received.
4. A person who telephones a 911 emergency line with the intent to annoy or harass another person or who makes a false 911 report is guilty of a class A misdemeanor.
  - a. Intent to annoy or harass is established by proof of one or more calls with no legitimate 911 purpose.
  - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.

Approved March 17, 1995

Filed March 20, 1995

## CHAPTER 126

## HOUSE BILL NO. 1371

(Representatives Carlisle, D. Henegar)  
(Senators W. Stenehjem, DeMers, Heinrich)

## STALKING

AN ACT to amend and reenact subsection 1 of section 12.1-17-07.1 of the North Dakota Century Code, relating to stalking.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-17-07.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section:

- a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
- b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
- c. "Stalk" means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and ~~which~~ that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must be such as would cause a reasonable person to experience fear, intimidation, or harassment.

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 127****HOUSE BILL NO. 1334**

(Representatives Christopherson, K. Henegar, Rydell, Aarsvold)  
(Senators Solberg, O'Connell)

**POLICE DOGS**

AN ACT relating to the killing or injury of certified, law enforcement support dogs; and to provide a penalty.

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

**SECTION 1. Killing or injury of certified, law enforcement support dog - Definition - Penalty.** A person is guilty of a class A misdemeanor and is subject to a civil penalty up to ten thousand dollars if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a certified, law enforcement support dog. For purposes of this section, "certified, law enforcement support dog" means any dog used by a law enforcement officer in the performance of the officer's functions and duties, regardless of whether the dog is on or off duty. This section does not apply to a law enforcement officer or a veterinarian who terminates the life of a certified, law enforcement support dog to relieve the dog of undue suffering and pain.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 128****SENATE BILL NO. 2315**

(Senators Robinson, Nalewaja, St. Aubyn)  
(Representatives Stenehjem, Svedjan, Wentz)

**HAZING**

AN ACT to provide a penalty for hazing.

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

**SECTION 1. Hazing - Penalty.** A person is guilty of an offense when, in the course of another person's initiation into or affiliation with any organization, the person willfully engages in conduct that creates a substantial risk of physical injury to that other person or a third person. As used in this section, "conduct" means any treatment or forced physical activity that is likely to adversely affect the physical health or safety of that other person or a third person, or which subjects that other person or third person to extreme mental stress, and may include extended deprivation of sleep or rest or extended isolation, whipping, beating, branding, forced calisthenics, overexposure to the weather, and forced consumption of any food, liquor, beverage, drug, or other substance. The offense is a class A misdemeanor if the actor's conduct causes physical injury, otherwise the offense is a class B misdemeanor.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 129****SENATE BILL NO. 2382**

(Senator W. Stenehjem)  
(Representative Delmore)

**SEXUAL EXPLOITATION BY THERAPIST**

AN ACT to amend and reenact section 12.1-20-06.1 of the North Dakota Century Code, relating to sexual exploitation by a therapist.

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

**SECTION 1. AMENDMENT.** Section 12.1-20-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty.** Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. A complaint of a violation of this section may be made to the police department of the city in which the violation occurred, the sheriff of the county in which the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies and the bureau of criminal investigation shall cooperate in investigations of violations of this section. As used in this section, unless the context or subject matter otherwise requires:

1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.
2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, chemical dependency counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.

Approved March 27, 1995

Filed March 28, 1995



## CHAPTER 130

## HOUSE BILL NO. 1077

(Representatives Rennerfeldt, Kretschmar)

(Senator Traynor)

## UNLAWFUL ENTRY OF VEHICLE

AN ACT to amend and reenact section 12.1-22-04 of the North Dakota Century Code, relating to unlawful entry into a vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-22-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-22-04. ~~Breaking~~ Unlawful entry into or concealment within a vehicle.

1. A person is guilty of an offense if, knowing that ~~he~~ the person is not licensed or privileged to do so, ~~he breaks into~~ the person:
  - a. Forcibly enters a vehicle, vessel, or aircraft; ~~or~~;
  - b. Enters a vehicle, vessel, or aircraft, without the use of force, with intent to commit a crime; or
  - c. Enters a vehicle, vessel, or aircraft lawfully, and with the intent to commit a crime, conceals himself therein oneself in the vehicle, vessel, or aircraft.
2. The offense is a class B felony if the actor is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury. Otherwise ~~it~~ the offense is a class C felony.

Approved March 21, 1995

Filed March 21, 1995

**CHAPTER 131****HOUSE BILL NO. 1436**  
(Representatives Mickelson, Kelsch)**THEFT OF CREDIT OR DEBIT CARDS**

AN ACT to create and enact a new subdivision to subsection 2 of section 12.1-23-05 of the North Dakota Century Code, relating to theft offenses that are class C felonies.

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

**SECTION 1.** A new subdivision to subsection 2 of section 12.1-23-05 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers;

Approved April 7, 1995  
Filed April 7, 1995

## CHAPTER 132

## SENATE BILL NO. 2087

(Senators Nalewaja, Lee, Robinson)  
(Representatives Byerly, Thoreson, Wald)

## FAILURE TO CARE FOR ELDERLY ADULT

AN ACT to amend and reenact section 12.1-31-07 of the North Dakota Century Code, relating to the penalty for failure to care for a vulnerable elderly adult.

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

SECTION 1. AMENDMENT. Section 12.1-31-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-31-07. Endangering ~~an~~ a vulnerable elderly adult - Penalty.

1. In this section, unless the context otherwise requires:
  - a. "Caregiver" means a person who is responsible for the care of ~~an~~ a vulnerable elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of ~~an~~ a vulnerable elderly adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to a vulnerable elderly adult who is the patient or client of the licensed health care provider.
  - b. "~~Elderly~~ Vulnerable elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.
2. Except as provided for by chapters 23-06.4, 23-06.5, and 30.1-30, a caregiver who knowingly performs an act that causes ~~an~~ a vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the vulnerable elderly adult and ~~such the~~ failure causes the vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, is guilty of a class ~~A misdemeanor~~ C felony.

Approved April 12, 1995

Filed April 13, 1995

**CHAPTER 133****HOUSE BILL NO. 1372**

(Representatives Carlisle, D. Henegar)  
(Senators W. Stenehjem, DeMers, Heinrich)

**RESTRAINING ORDER FEES AND DURATION**

AN ACT to create and enact a new subsection to section 12.1-31.2-01 of the North Dakota Century Code, relating to fees for a disorderly conduct restraining order; and to amend and reenact subsection 4 of section 12.1-31.2-01 of the North Dakota Century Code, relating to a temporary restraining order.

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

**SECTION 1.** A new subsection to section 12.1-31.2-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Fees for filing and service of process may not be charged to the petitioner in any proceeding seeking relief due to domestic violence under chapter 12.1-31.2.

**SECTION 2. AMENDMENT.** Subsection 4 of section 12.1-31.2-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subsection 5 for not more than thirty days, unless otherwise terminated by the court.

Approved March 10, 1995  
Filed March 13, 1995

**CHAPTER 134****SENATE BILL NO. 2496**

(Senators C. Nelson, LaFountain, Wogsland)  
(Representatives Kroeber, Mahoney, Maragos)

**LIFE IMPRISONMENT WITHOUT PAROLE FOR AA  
FELONY**

AN ACT to amend and reenact subsection 1 of section 12.1-32-01 of the North Dakota Century Code, relating to the imposition of life imprisonment without parole as the maximum penalty for a class AA felony.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have ~~his~~ that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after ~~his~~ that person's admission to the penitentiary.

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 135****SENATE BILL NO. 2040**

(Legislative Council)

(Interim Budget Committee on Youth Services)

(Senator Robinson)

(Representatives Martin, Johnson)

**SEX OFFENSE AGAINST MINOR SENTENCING**

AN ACT to amend and reenact subsection 1 of section 12.1-32-02 and section 12.1-32-06.1 of the North Dakota Century Code, relating to sentencing alternatives and to an additional period of probation that may be imposed for a person found guilty of a sexual offense against a minor.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
  - a. Payment of the reasonable costs of the person's prosecution.
  - b. Probation.
  - c. A term of imprisonment, including intermittent imprisonment:
    - (1) In a state correctional facility, a regional corrections center, a county jail, or in the Missouri River correctional center in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.
    - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
    - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
  - d. A fine.
  - e. Restitution for damages resulting from the commission of the offense.
  - f. Restoration of damaged property, or other appropriate work detail.

g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

h. Commitment to a sexual offender treatment program.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection must not be construed as not permitting the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08.

**66 SECTION 2. AMENDMENT.** Section 12.1-32-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions.**

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:

- a. The order imposing probation;
- b. The defendant's release from incarceration; or
- c. Termination of the defendant's parole.

2. In cases where If the defendant has plead or been found guilty of a felony sexual offense against a minor in violation of section 12.1-20-03, 12.1-20-04, or 12.1-20-11, the court may impose an additional period of probation not to exceed five years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program. If the defendant has plead or been found guilty of a misdemeanor sexual offense against a minor in violation of section 12.1-20-05, 12.1-20-06, or 12.1-20-07, the court may impose an additional period of probation not to exceed two years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program.

3. If the defendant has plead plead or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.

~~3-~~ 4. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five

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<sup>66</sup> Section 12.1-32-06.1 was also amended by section 1 of House Bill No. 1223, chapter 137.

years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.

4. 5. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
5. 6. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

Approved March 10, 1995

Filed March 10, 1995



## CHAPTER 136

### HOUSE BILL NO. 1218

(Representatives Carlisle, Mahoney, Wald)  
(Senators Nalewaja, B. Stenehjelm, Robinson)

## SENTENCING OF VIOLENT OFFENDERS

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to sentencing of violent offenders; and to amend and reenact sections 12-54.1-01, 12-54.1-03, subsection 12 of section 12.1-32-02, and section 12.1-32-09 of the North Dakota Century Code, relating to sentence reductions for good or meritorious conduct, presentence investigations, and extended sentences for special dangerous or habitual offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 12-54.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12-54.1-01. Performance based sentence reduction.** Offenders Except as provided under section 5 of this Act, offenders sentenced to the penitentiary or any of its affiliated facilities are eligible to earn sentence reductions based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

**SECTION 2. AMENDMENT.** Section 12-54.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12-54.1-03. Meritorious conduct sentence reduction.** In addition to sentence reductions under section 12-54.1-01 Except as provided under section 5 of this Act, offenders sentenced to the state penitentiary or any of its affiliated facilities may be awarded, as provided by penitentiary rules and regulations upon written recommendation of a penitentiary multidisciplinary team, lump-sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic acts or as a special control and security measure. Such sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden, and approved by the director of the department of corrections and rehabilitation. Any sentence reduction for special control or security measures may not exceed two days good time per month per inmate.

<sup>67</sup> **SECTION 3. AMENDMENT.** Subsection 12 of section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

**SECTION 4. AMENDMENT.** Section 12.1-32-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-09. Dangerous special offenders, ~~extended~~ - Habitual offenders - Extended sentences - Procedure.**

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with the provisions of this section upon a finding of any one or more of the following:
  - a. The convicted offender is a dangerous, mentally abnormal person. The court ~~shall~~ may not make such a finding unless the presentence report, including a psychiatric examination, concludes that the offender's conduct has been characterized by persistent aggressive behavior, and that such behavior makes ~~him~~ the offender a serious danger to other persons.
  - b. The convicted offender is a professional criminal. The court ~~shall~~ may not make such a finding unless the offender is an adult and the presentence report shows that the offender has substantial income or resources derived from criminal activity.
  - c. The convicted offender is a ~~persistent~~ habitual offender. The court ~~shall~~ may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class ~~B~~ C or above; ~~or of one class B felony or above plus two offenses potentially punishable by imprisonment classified below class B felony~~; committed at different times when the offender was an adult. For the purposes of this

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<sup>67</sup> Section 12.1-32-02 was also amended by section 5 of Senate Bill No. 2264, chapter 124, and section 17 of House Bill No. 1027, chapter 120.

subdivision, a felony conviction in another state or under the laws of the United States shall be considered a felony of class ~~B~~ C or above if it is punishable by a maximum term of imprisonment of ~~ten~~ five years or more.

- d. The offender was convicted of an offense which seriously endangered the life of another person, and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because ~~he~~ the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence ~~shall~~ must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had ~~in his own name or under his control~~ income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:
  - a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
  - b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
  - c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.
3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender or a habitual offender, ~~such~~ the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for ~~such~~ the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why ~~such~~ the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case ~~shall~~ may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury. If the court finds that the filing of the notice as a

public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and ~~his~~ the offender's counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

**SECTION 5.** A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Sentencing of violent offenders. Any offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 137

## HOUSE BILL NO. 1223

(Representatives Hanson, Kretschmar, Wardner)

(Senators O'Connell, Freborg, Nalewaja)

## PROBATION EXTENDED FOR CERTAIN OFFENSES

AN ACT to amend and reenact section 12.1-32-06.1 of the North Dakota Century Code, relating to an additional period of probation that may be imposed for certain types of offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>68</sup> SECTION 1. AMENDMENT. Section 12.1-32-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions.

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
2. If the defendant has plead or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional period of probation not to exceed five years.
3. ~~In cases where~~ If the defendant has plead or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
- 3+ 4. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.

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<sup>68</sup> Section 12.1-32-06.1 was also amended by section 2 of Senate Bill No. 2040, chapter 135.

4. 5. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
5. 6. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

Approved March 31, 1995

Filed March 31, 1995

**CHAPTER 138****SENATE BILL NO. 2194**

(Senators Thane, DeMers)

(Representative Carlisle)

(At the request of the Department of Corrections and  
Rehabilitation)**PROBATION REVOCATION AND COMMUNITY  
CONSTRAINTS**

AN ACT to amend and reenact subsections 3 and 4 of section 12.1-32-07 of the North Dakota Century Code, relating to community constraints and conditions as intermediate measures to avoid probation revocation; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 12.1-32-07 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.

Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house; or
  - h. Intensive supervision program.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:

- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.
- b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- d. Support the defendant's dependents and meet other family responsibilities.
- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
- f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
- g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
- h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
- i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
- l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
- o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.



- p. ~~Undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation.~~
- q. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 of section 12.1-32-08.

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

Approved March 27, 1995  
Filed March 28, 1995

## CHAPTER 139

## HOUSE BILL NO. 1152

(Judiciary Committee)

(At the request of the Attorney General)

## SEX OFFENDER REGISTRATION

AN ACT to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for offenders against children and sexual offenders and community notification; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 12.1-32-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-15. Offenders against children and sexual offenders - Registration requirement - Penalty.**

1. As used in this section:

- a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, ~~12.1-27.2~~, or 12.1-29 in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Sexual offender" means a person who has ~~been convicted~~ pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, ~~or~~ 12.1-20-11, chapter 12.1-27.2, or an attempt to commit these offenses.

2. After a person has ~~been convicted~~ pled guilty to or been found guilty of a crime against a child or an attempted crime against a child, ~~the court may impose~~; or after a person has ~~been convicted~~ pled guilty or been found guilty as a sexual offender, the court shall impose, in addition to any ~~other~~ penalty provided by law, a requirement that the person register, within ~~thirty~~ ten days of coming into a county in which the person resides or is temporarily domiciled, with the chief of police of the city or the sheriff of the county if the person resides in an area other than a city. The court shall require a person to register by stating this requirement on the court records. A person must also register if that person:

- a. Is incarcerated or is on probation or parole on the effective date of this Act for a crime against a child or as a sexual offender;
- b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of another state or the federal government equivalent to those offenses set forth in subdivisions a and c of subsection 1; or

- c. Has pled guilty to or been found guilty of a crime against a child or as a sexual offender within ten years prior to the effective date of this Act.
3. When ~~the court has imposed the requirement for registration~~ a person is required to register under this section, the official in charge of a facility or institution where the person required to register is confined, or the department, shall, before the discharge, parole, or release of that person, inform the person of the duty to register pursuant to this section. The official or the department shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register has been explained to that person. The official in charge of the place of confinement, or the department, shall obtain the address where the person expects to reside upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give one copy of the form to the person and shall send four copies to the attorney general no later than forty-five days before the scheduled release of that person. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release, one copy to the prosecutor who prosecuted the person, and one copy to the court in which the person was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the person.
4. A person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of that person's duty to register under this section by the court in which that person is convicted. The court shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register under this section has been explained to that person. The court shall obtain the address where the person expects to reside upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the person and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release.
5. Registration consists of a written statement signed by the person, giving the information required by the attorney general, and the fingerprints and photograph of the person. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a person required to register pursuant to this section has a change in name or address, that person shall inform in writing, within ten days, the law enforcement agency with whom that person last registered of the person's new name or address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence. Upon a change of address, the person required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of

residence. These provisions also apply in any other state that requires registration.

6. A person required to register under this section shall comply with the registration requirement for a period of ten years after conviction the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; except that for violations of section 12.1-17-01, 12.1-17-02, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-18-03, 12.1-20-05, or 12.1-20-07, the person shall comply with the registration requirement for a period of five years after conviction or after release from incarceration, whichever is later.
7. A person required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve a person who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year. A person who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.
8. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the person revoked. The statements, photographs, and fingerprints required by this section are open to inspection by the public.
9. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.
10. Relevant and necessary registration information may be disclosed to the public by a law enforcement agency if the agency determines that the individual registered under this section is a public risk and disclosure of the registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A law enforcement agency, its officials, and its employees are not subject to civil or criminal liability for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 1 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning offenders required to register under this section from criminal history record information maintained pursuant to chapter 12-60 or from an agency or

department of another state or the federal government and shall provide the information upon request at no cost.

Approved April 11, 1995

Filed April 12, 1995

**CHAPTER 140****SENATE BILL NO. 2454**

(Senators Scherber, Mathern, Watne)  
(Representatives Kelsch, Maragos, Price)

**FEMALE GENITAL MUTILATION**

AN ACT to prohibit female genital mutilation; and to provide a penalty.

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

**SECTION 1. Surgical alteration of the genitals of female minor - Penalty - Exception.**

1. Except as provided in subsection 2, any person who knowingly separates or surgically alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C felony.
2. A surgical operation is not a violation of this section if a licensed medical practitioner performs the operation to correct an anatomical abnormality or to remove diseased tissue that is an immediate threat to the health of the female minor. In applying this subsection, any belief that the operation is required as a matter of custom, ritual, or standard of practice may not be taken into consideration.

Approved March 17, 1995

Filed March 20, 1995

**CHAPTER 141****HOUSE BILL NO. 1463**

(Representatives Poolman, Rydell, Svedjan)

(Senators Nalewaja, Thane, DeMers)

**CHILD SUPPORT NONPAYMENT PENALTIES**

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to willful failure to pay child support; to amend and reenact section 14-07-15 of the North Dakota Century Code, relating to abandonment or nonsupport of a child; and to provide a penalty.

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

**SECTION 1.** A new chapter to title 12.1 of the North Dakota Century Code is created and enacted as follows:

Willful failure to pay child support - Classification of offenses - Affirmative defense - Penalty.

1. A person is guilty of an offense if the person willfully fails to pay child support in an amount ordered by a court or other governmental agency having authority to issue the orders.
2. a. If the unpaid amount is greater than the greater of two thousand dollars or six times the monthly child support obligation, the offense is a class C felony.
  - b. If the unpaid amount is greater than the greater of one thousand dollars or three times the monthly child support obligation, but less than the amount required under subdivision a, the offense is a class A misdemeanor.
  - c. If the unpaid amount is less than the amount required under subdivision b, the offense is a class B misdemeanor.
3. If the failure to pay child support occurs while the defendant was in another state, and while the child was in this state, the offense must be construed to have been committed in this state.
4. It is an affirmative defense to a charge under subsection 1 that the defendant suffered from a disability during the periods an unpaid child support obligation accrued, such as to effectively preclude the defendant's employment at any gainful occupation. This defense is available only if the defendant lacked the means to pay the ordered amounts other than from employment.
5. For purposes of this section, "child support" has the meaning provided in section 14-09-09.10.
6. This section applies only to the willful failure to pay child support after the effective date of this Act.

**SECTION 2. AMENDMENT.** Section 14-07-15 of the North Dakota Century Code is amended and reenacted as follows:

**14-07-15. Abandonment or nonsupport of child - Penalty.**

1. Every parent or other person legally responsible for the care or support of a child ~~who is unable to support himself by lawful employment; who wholly abandons such the~~ child or willfully fails to furnish food, shelter, clothing, and medical attention reasonably necessary and sufficient to ~~keep meet~~ the child's life from danger and discomfort and his health from injury ~~needs~~ is guilty of a class C felony.
2. Any food, shelter, clothing, or medical attentions, furnished by or through a welfare or charitable program of any governmental agency, civic or religious organization, or a combination thereof, or any intervening third party, on the basis of need, does not avoid, excuse, relieve, or discharge, either parent, or person legally responsible for care and support of a child, from the criminal penalty for the willful failure or neglect to provide such support.
3. ~~Neither may a~~ A parent ~~be is not~~ relieved, excused, ~~nor or~~ discharged from ~~such the~~ responsibility and criminal penalty provided for ~~herein, for the willful neglect or failure to provide such care and support; in this section if the other parent is providing the child with care and support to the best of his or her ability; but where such care and support is not sufficient to keep the child's life from danger and discomfort; or its health from injury unless the parents reside together.~~
4. The fact, if it is a fact, that either parent may have secured a ~~decree of~~ divorce awarding the custody of ~~such the~~ child, in no manner relieves either parent from the requirements and penalty of this section, except that compliance with the terms of ~~such decree for a child support of such child must be deemed a compliance herewith; provided, however, that if order by a parent is an affirmative defense to a charge under this section made against that parent.~~
5. If the parent or other person legally responsible for the care or support of a child ~~who is under the age of eighteen years and unable to support himself; as hereinbefore provided,~~ while in another state, and while ~~such the~~ minor child is in this state, ~~wholly abandons the child or willfully and intentionally~~ fails to furnish food, clothing, shelter, and medical attention ~~as herein provided; such~~ reasonably necessary and sufficient to ~~meet the child's needs, the~~ failure must nevertheless be construed to have been committed in this state, and all of the laws of this state with reference to punishment apply with the same force and effect as if ~~such the~~ abandonment and failure to support had occurred in this state.
6. For purposes of this section, "willfully" has the meaning provided in section 12.1-02-02.



# DEBTOR AND CREDITOR RELATIONSHIP

## CHAPTER 142

### SENATE BILL NO. 2532

(Senators Kringstad, Yockim)

(Representative Stenehjem)

## CONSUMER FINANCE LOAN CLOSING COSTS

AN ACT to amend and reenact subsection 4 of section 13-03.1-15 of the North Dakota Century Code, relating to closing costs on consumer finance loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 4 of section 13-03.1-15 of the North Dakota Century Code is amended and reenacted as follows:

4. No further amount whatsoever in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. No agreement may provide for the payment by the debtor of attorney fees. However, such restrictions do not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, an amount not exceeding ~~seventy-five dollars~~ for closing costs actually incurred in connection with a loan secured by an interest in land (including fees or premiums for title examination, title insurance, and surveys, fees for notarizing title or mortgage documents, and appraisal fees), and the identifiable charge or premium for insurance provided for in section 13-03.1-17. A bona fide error of law or fact is not deemed a violation of this section. A bona fide clerical error in the calculation of interest is not deemed a violation of this section if the licensee corrects the error.

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 143****SENATE BILL NO. 2431**

(Senators Krebsbach, DeMers, Mutch)  
(Representatives Clark, Klein)

**COLLECTION AGENCY LICENSE NOT  
TRANSFERABLE**

AN ACT to amend and reenact section 13-05-05 of the North Dakota Century Code, relating to transferability of collection agency licenses.

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

**SECTION 1. AMENDMENT.** Section 13-05-05 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-05. Expiration and renewal of license.** All licenses required herein expire on June thirtieth of each year and must be renewed on the succeeding first day of July upon payment of required annual fees. ~~When a licensee has been delinquent in renewing his license, the~~ The department of banking and financial institutions may charge an additional fee of five dollars for the renewal of ~~such a~~ license after June thirtieth. A collection agency license is not transferable.

Approved March 2, 1995  
Filed March 3, 1995

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 144

### SENATE BILL NO. 2285

(Senators Schobinger, Solberg, B. Stenehjem, Yockim)  
(Representatives Poolman, Price)

## DISABILITY DEFINED FOR DISCRIMINATION PURPOSES

AN ACT to amend and reenact sections 14-02.4-02, 14-02.4-03, 14-02.4-04, 14-02.4-05, 14-02.4-06, 14-02.4-08, 14-02.4-09, 14-02.4-12, 14-02.4-13, 14-02.4-14, 14-02.4-15, 14-02.4-16, 14-02.4-17, and 14-02.4-18 of the North Dakota Century Code, relating to definitions for purposes of discrimination and reasonable accommodation of individuals with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-02.4-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-02. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
4. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, housing accommodations, property rights, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances,

requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

~~4~~ 5. "Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

~~5~~ 6. "Employer" means a person within the state who employs one or more employees for more than one quarter of the year, and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.

~~6~~ 7. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.

~~7~~ "Handicap" means an impairment that substantially limits one or more major life activities. The term includes having a record of such an impairment or being regarded as having such an impairment.

8. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

9. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.

10. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.
11. "Person" means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public corporation, and the state and a political subdivision and agency thereof.
12. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.
13. "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.
14. "Real estate broker" and "real estate salesman" mean a real estate broker and real estate salesman as defined in section 43-23-06.1.
15. "Real property" means a right, title, interest in or to the possession, ownership, enjoyment, or occupancy of a parcel of land, building situated thereon, or portion of the building.
16. "Reasonable accommodations" means accommodations by an employer that do not:
  - a. Unduly disrupt or interfere with the employer's normal operations;
  - b. Threaten the health or safety of the ~~handicapped~~ individual with a disability or others;
  - c. Contradict a business necessity of the employer; or
  - d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
17. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
18. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

**SECTION 2. AMENDMENT.** Section 14-02.4-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-03. Employer's discriminatory practices.** It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental ~~handicap~~ disability or because of that person's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least forty-four thousand dollars.

**SECTION 3. AMENDMENT.** Section 14-02.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-04. Employment agency's discriminatory practices.** It is a discriminatory practice for an employment agency to accord adverse or unequal treatment to a person in connection with an application for employment, referral, or request for assistance in procurement of employees because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

**SECTION 4. AMENDMENT.** Section 14-02.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-05. Labor organization's discriminatory practices.** It is a discriminatory practice for a labor organization to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal treatment to a person with respect to the person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or condition of employment because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance.

**SECTION 5. AMENDMENT.** Section 14-02.4-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-06. Certain employment advertising deemed discriminatory.** It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance, or who participate in lawful activity off the employer's premises during nonworking hours which activity is not in direct conflict with the essential business-related interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.

**SECTION 6. AMENDMENT.** Section 14-02.4-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-08. Qualification based on religion, sex, national origin, physical or mental ~~handicap~~ disability, or marital status.** Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental ~~handicap~~ disability, or marital status in those circumstances where religion, sex, national origin, physical or mental ~~handicap~~ disability, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, or to discharge an individual from a position on the basis of that individual's participation in a lawful activity that is off the employer's premises and that takes place during nonworking hours and which is not in direct conflict with the essential business-related interests of the employer, if that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer.

**SECTION 7. AMENDMENT.** Section 14-02.4-09 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory.** Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; or for an employer to give and to act upon the results of any professionally developed ability test; provided, that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

**SECTION 8. AMENDMENT.** Section 14-02.4-12 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-12. Discriminatory housing practices by owner or agent.** It is a discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed or trust, or will to:

1. Refuse to transfer an interest in real property or housing accommodation to a person because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance;

2. Discriminate against a person in the terms, conditions, or privileges of the transfer of an interest in real property or housing accommodation because of race, color, religion, sex, national origin, age, physical or mental handicap disability, or status with respect to marriage or public assistance; or
3. Indicate or publicize that the transfer of an interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of a particular race, color, religion, sex, national origin, age, physical or mental handicap disability, or status with respect to marriage or public assistance.

**SECTION 9. AMENDMENT.** Section 14-02.4-13 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-13. Discriminatory housing practice by financial institution or lender.** It is a discriminatory practice for a person, or agent or employee of the person, who lends or provides other financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of real property to discriminate in lending or financial assistance decisions, or in the extension of services in connection therewith, based on the race, color, religion, sex, national origin, age, physical or mental handicap disability, or status with respect to marriage or public assistance of the person seeking the loan or financial assistance.

**SECTION 10. AMENDMENT.** Section 14-02.4-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-14. Public accommodations - Discriminatory practices.** It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public accommodations; or to give adverse, unlawful, or unequal treatment to a person with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available, because of the person's race, color, religion, sex, national origin, age, physical or mental handicap disability, or status with respect to marriage or public assistance.

**SECTION 11. AMENDMENT.** Section 14-02.4-15 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-15. Public services - Discriminatory practices.** It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to a person access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in connection therewith because of the person's race, color, religion, sex, national origin, age, physical or mental handicap disability, or status with respect to marriage or public assistance.

**SECTION 12. AMENDMENT.** Section 14-02.4-16 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-16. Advertising public accommodations or services - Discriminatory practices - Exceptions.** It is a discriminatory practice for a person to advertise or in any other manner indicate or publicize that the patronage of persons of a particular race, color, religion, sex, national origin, age, physical or mental handicap disability, or status with respect to marriage or public assistance is unwelcome, objectionable, not acceptable, or not solicited. This section does not prohibit a notice or



advertisement banning minors from places where alcoholic beverages are being served.

**SECTION 13. AMENDMENT.** Section 14-02.4-17 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-17. Credit transactions - Discriminatory practices.** It is a discriminatory practice, except as permitted or required by the Equal Credit Opportunity Act [15 U.S.C. 1691], for a person, whether acting as an individual or for another, to deny credit, increase the charges or fees for or collateral required to secure credit, restrict the amount or use of credit extended, impose different terms or conditions with respect to the credit extended to a person, or item or service related thereto because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance. This section does not prohibit a party to a credit transaction from considering the credit history of a person or from taking reasonable action thereon.

**SECTION 14. AMENDMENT.** Section 14-02.4-18 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-18. Concealing, aiding, compelling, or inducing unlawful discrimination - Threats or reprisals.** It is a discriminatory practice for a person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of a device whatever to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.

Approved March 10, 1995

Filed March 13, 1995

## CHAPTER 145

## SENATE BILL NO. 2251

(Senator Holmberg)

## EMPLOYER DISCRIMINATORY PRACTICES

AN ACT to amend and reenact section 14-02.4-10 of the North Dakota Century Code, relating to when physical and medical examinations of employees are discriminatory practices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-10 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-10. Employment of individual - Exceptions - Physical examination - Investigation of medical history.

1. Sections 14-02.4-03 through 14-02.4-06 do not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or in the domestic service of a person.
2. The employment of one person in place of another, standing by itself, is not evidence of a discriminatory practice.
3. ~~It~~ After a conditional offer of employment, it is not discriminatory practice for an employer, employment agency, or labor organization to:
  - a. Require a person to undergo physical examination for the purpose of determining the person's capability to perform ~~available employment~~ the essential functions of the job with or without reasonable accommodations if every entering employee in the same job category is subjected to the examination; or
  - b. Conduct an investigation as to the person's medical history for the purpose of determining the person's capability to perform available employment if every entering employee in the same job category is subjected to the investigation.
4. Medical history obtained under this section must be collected and maintained separate from nonmedical information and must be kept confidential.

Approved March 17, 1995

Filed March 20, 1995

**CHAPTER 146****SENATE BILL NO. 2362**

(Senators W. Stenehjem, Traynor)  
(Representatives Kretschmar, Mahoney)

**LABOR DEPARTMENT DISCRIMINATION MEDIATION**

AN ACT to amend and reenact section 14-02.4-21 of the North Dakota Century Code, relating to mediation of discrimination complaints by the department of labor.

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

**SECTION 1. AMENDMENT.** Section 14-02.4-21 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-21. Optional mediation by department of labor - Relief - Appeals.** The department of labor may receive complaints of discriminating employment practices under this chapter and attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. If the commissioner of labor or the commissioner's representative determines the claim of discriminating employment practices is valid, the commissioner may prohibit the employer from engaging in the discriminating employment practice and order appropriate relief such as an injunction, equitable relief, or backpay. Earnings or potential earned income by the employee who was the object of the discrimination will reduce the backpay granted. A party may appeal a decision of the commissioner to the district court in the district in which the complaining employee was employed at the time of the alleged discriminatory practice. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter.

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 147

## SENATE BILL NO. 2117

(Political Subdivisions Committee)  
(At the request of the Supreme Court)

## DISTRICT COURT CLERK DUTIES

AN ACT to amend and reenact sections 14-03-10, 14-03-11, 14-03-17, 14-03-19, 14-03-20, 14-03-21, 14-03-22, 14-03-24, 30.1-02-06, and 57-37.1-12 of the North Dakota Century Code, relating to clerk of district court duties concerning marriage licenses, probate matters, and access to safety deposit boxes.

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

<sup>69</sup> SECTION 1. AMENDMENT. Section 14-03-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-10. Marriage may not be solemnized without license. A person may not solemnize any marriage until the parties to the marriage produce a license regularly issued not more than sixty days ~~prior to~~ before the date of the marriage by a clerk of district judge court serving the county in which either of the contracting parties or the parents of either of the parties resides or is temporarily domiciled, or if such county is unorganized, or disorganized, of the county to which it is attached for judicial purposes, or by a clerk of district judge court serving the county ~~wherein in which~~ the marriage is to be solemnized according to the terms of section 14-03-19. For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota ~~shall be~~ is deemed to reside in the county ~~wherein in which~~ that person is stationed.

SECTION 2. AMENDMENT. Section 14-03-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-11. Who issues marriage license to clerk of district judge court. When a clerk of district judge court desires to have a license for the ~~judge's clerk's~~ own marriage issued in the county of the ~~judge's clerk's~~ residence, the judge clerk may request another clerk of district judge court to act in the ~~judge's clerk's~~ stead upon the application for the license. The other clerk of district judge court has the power and authority to issue the license in the county of the residence of the judge clerk seeking the license. The request must be in writing and must be filed, with the application and other related papers relative to it, and must be recorded in the marriage record. Upon the return of the license, the clerk of district judge court serving the county in which it was issued may record it and note the record thereon notwithstanding the judge clerk is one of the contracting parties named in the license.

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<sup>69</sup> Section 14-03-10 was also amended by section 1 of House Bill No. 1069, chapter 148.

<sup>70</sup> **SECTION 3. AMENDMENT.** Section 14-03-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-17. Application for license.**

1. When application is made to ~~any a clerk of district judge of this state~~ court for a marriage license, the judge clerk shall inquire of the applicant upon oath ~~relative to~~ concerning the legality of the contemplated marriage. The judge clerk may examine other witnesses upon oath. The facts ~~relative to~~ concerning the legality of the marriage may be submitted to the district judge clerk by affidavit. The ~~district judge clerk~~ also shall require each applicant to submit the following facts upon blanks provided by the county, together with documentary evidence of age:
  - a. An affidavit by each of the applicants showing that each is over the age of eighteen years. In addition, each applicant shall exhibit to the district judge clerk a birth certificate or other satisfactory evidence of age. If either applicant is under the age of eighteen years, the district judge clerk shall require the written consent under oath of:
    - (1) Either parent of the minor applicant, if the parents are living together;
    - (2) The parent having the legal custody of the minor applicant, if the parents are not living together;
    - (3) The surviving parent, if one of the parents of the minor applicant is deceased; or
    - (4) The guardian, or person under whose care and government the minor applicant is, if both parents of the minor applicant are deceased, or if a person other than a parent has legal and actual custody of the minor applicant.
  - b. An affidavit showing whether ~~or not~~ either or both of the parties have been divorced. If a decree of divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the application. A license shall not be issued if it contravenes any provisions of the ~~decree of divorce~~ decree.
2. All affidavits ~~shall~~ must be subscribed and sworn to before a person authorized to administer oaths. The district judge clerk shall retain on file in the ~~judge's clerk's~~ office all papers and records pertaining to all marriage licenses. Anyone knowingly swearing falsely to the statements contained in any affidavit mentioned in this section ~~shall be punished as~~ is subject to the penalty provided in section 14-03-28.

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<sup>70</sup> Section 14-03-17 was also amended by section 2 of House Bill No. 1069, chapter 148.

3. Each application for a marriage license must also contain a statement to the following effect:

#### NOTICE TO APPLICANTS

- a. Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.
- b. A person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname. Parties to a marriage need not have the same surname.
- c. One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space below. The entry must consist of one of the following surnames:
  - (1) The surname of the other spouse;
  - (2) Any former surname of either spouse;
  - (3) A name combining into a single surname all or a segment of the premarrriage surname or any former surname of either spouse; or
  - (4) A combination name separated by a hyphen, provided that each part of the combination surname is the premarrriage surname or a former surname of either spouse.
- d. Use of the option under subdivision c has the effect of providing a record of the surname change. The marriage certificate containing the new surname, if any, constitutes proof that the use of the new surname, or the retention of the former surname, is lawful.
- e. Neither the use of nor the failure to use the option of selecting a new surname by means of this application, as provided in subdivision c, abrogates the right of either party to adopt a different surname through usage at a future date.

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(Optional -- Enter new surname above)

**SECTION 4. AMENDMENT.** Section 14-03-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-19. License issued to all who comply with law.** If a clerk of district ~~judge court~~ is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, then the ~~district judge~~ clerk shall issue and sign a marriage license in duplicate and affix the ~~judge's~~ clerk's seal to both the original and the duplicate.

**SECTION 5. AMENDMENT.** Section 14-03-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-20. License and certificate.** The marriage license and certificate of the person solemnizing the marriage must be upon one blank form in duplicate consisting of two pages with a perforated seam to make it readily detachable. The form must be substantially as follows:

## MARRIAGE LICENSE

[illegible]

To any person authorized by law to perform the marriage ceremony,  
greeting:

You are hereby authorized to join in marriage \_\_\_\_\_ of \_\_\_\_\_, aged \_\_\_\_\_ who has \_\_\_\_\_ been divorced, and \_\_\_\_\_ of \_\_\_\_\_, aged \_\_\_\_\_ who has \_\_\_\_\_ been divorced, and of this license and your certificate you will make due return to my office within five days.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Clerk of District ~~Judge~~ Court

## CERTIFICATE OF MARRIAGE

I hereby certify that the persons named in the foregoing license, \_\_\_\_\_ and \_\_\_\_\_, whose names after marriage are \_\_\_\_\_ and \_\_\_\_\_, respectively, were by me joined in marriage at \_\_\_\_\_, county of \_\_\_\_\_, State of North Dakota, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

In the presence of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Witnesses

Every marriage license must contain the full name of each party before the marriage. Every certificate of marriage must contain the full name of each party before and after the marriage and be signed by two witnesses to the marriage in addition to the signature of the person who solemnized the marriage.

**SECTION 6. AMENDMENT.** Section 14-03-21 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-21. License and certificate returned to clerk of district judge court - Duplicate delivered to persons married - Records kept. When a person authorized by law solemnizes a marriage, that person shall fill out and sign the certificate following the license in duplicate, giving the person's official title, or if a minister of the gospel or priest, the ecclesiastical body with which the minister or priest is connected. The original copy of the certificate and license must be returned to the clerk of district judge court who issued the license within five days after the date of the solemnization of the marriage, and the duplicate copy must be immediately delivered to the persons married. The judge clerk shall file the original copy in the judge's clerk's office and retain it as part of the judge's clerk's records. Any person who willfully neglects to make such return within the time required ~~must be punished~~ as is subject to the penalty provided in section 14-03-28.

**SECTION 7. AMENDMENT.** Section 14-03-22 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-22. Marriage license fee - Supplemental fee - Duties of officers.** For the issuance and filing of a marriage license the clerk of district judge court shall collect the sum of six dollars from the party applying for the license. The judge clerk shall also collect from the applicant a supplemental fee of twenty-nine dollars for aid to victims of domestic violence through the domestic violence prevention fund; pursuant to in accordance with chapter 14-07.1. The judge clerk shall deposit the collected sums monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The judge clerk shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in the registrar's office for that purpose. The registrar shall index the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

**SECTION 8. AMENDMENT.** Section 14-03-24 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-24. Certified record is evidence.** The books of record of marriage licenses issued and certificates returned which are kept by a clerk of district judge court serving any county, or copies of such entries certified by the judge clerk under the clerk's seal of the court, and certified copies of the records of the registrar of vital statistics, must be received as evidence in all courts, and are prima facie evidence in all courts and places of the facts stated therein.

**SECTION 9. AMENDMENT.** Section 30.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-02-06. (1-307) Powers.** The acts and orders which this title specifies as performable by the ~~court or~~ district court may be performed either by a judge of the appropriate court or by a person, including the clerk, designated by the appropriate court by a written order filed and recorded in the office of the court. However, without a written order of the court, the clerk may sign all appropriate documents in uncontested informal probate matters if the requirements of sections 30.1-12-08 and 30.1-13-01 have been satisfied, at least one hundred twenty hours have elapsed since the decedent's death, and the person seeking appointment as personal representative is named in the will or otherwise has priority under section 30.1-13-03 or others entitled to appointment have renounced the right to appointment.

**SECTION 10. AMENDMENT.** Section 57-37.1-12 of the North Dakota Century Code is amended and reenacted as follows:



**57-37.1-12. Duties of depositories - Inventory of contents of safe deposit box required.** No safe deposit company, trust company, corporation, limited liability company, bank, or other institution or person engaged in the business of renting safe deposit boxes or other receptacles of similar character may rent any such box or receptacle without first procuring from each person given access thereto an agreement in writing to the effect that upon the death of any person having the right of access to the box or receptacle, notice of the person's death will be given to the safe depository, bailee, or lessor before seeking access to the box or receptacle. A safe deposit company, trust company, corporation, limited liability company, bank, or other institution or person having the possession, control, custody, or partial custody of any safe deposit box or similar receptacle may not permit access to the box or receptacle after the death of any person who at the time of the person's death had the right or privilege of access thereto, by any other person until a complete inventory of the entire contents of the safe deposit box or receptacle has been prepared by the personal representative of the deceased person, a cotenant of the safe deposit box or receptacle, or any other person granted access by the clerk of district court order in the presence of an officer or other agent of the lessor of the box. The inventory so prepared must be filed with the state tax commissioner by the lessor of the box within thirty days from the date of its preparation. After the lessor of the box has complied with the provisions of this section, it may not limit access to the safe deposit box or similar receptacle by the personal representative of the deceased person or cotenant of the safe deposit box or receptacle or to any other person granted access by the clerk of district court order, and it is released of all liability to the state of North Dakota, and for any assets, documents, or things taken from the safe deposit box or similar receptacle.

Approved March 7, 1995

Filed March 7, 1995

## CHAPTER 148

## HOUSE BILL NO. 1069

(Representative Olson)

## MARRIAGE RESIDENCY AND SURNAME OPTIONS

AN ACT to create and enact a new section to chapter 14-03 of the North Dakota Century Code, relating to surnames; and to amend and reenact section 14-03-10 and subsection 3 of section 14-03-17 of the North Dakota Century Code, relating to residency requirements and applications for marriage licenses.

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

<sup>71</sup> SECTION 1. AMENDMENT. Section 14-03-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-10. Marriage may not be solemnized without license. A person may not solemnize any marriage until the parties to the marriage produce a license regularly issued not more than sixty days prior to the date of the marriage by a:

1. A district judge serving the county in which either of the contracting parties resides or the parents is temporarily domiciled;
2. A district judge serving the county in which a parent of either of the parties resides or is temporarily domiciled; or if such county is unorganized, or disorganized, of the county to which it is attached for judicial purposes, or by a
3. A district judge serving the county wherein in which the marriage is to be solemnized according to the terms of section 14-03-19.

For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota shall be deemed to reside in the county wherein in which that person is stationed.

<sup>72</sup> SECTION 2. AMENDMENT. Subsection 3 of section 14-03-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Each application for a marriage license must also contain a statement ~~to the following effect:~~

## NOTICE TO APPLICANTS

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<sup>71</sup> Section 14-03-10 was also amended by section 1 of Senate Bill No. 2117, chapter 147.

<sup>72</sup> Section 14-03-17 was also amended by section 3 of Senate Bill No. 2117, chapter 147.

- a. Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.
- b. A person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname. Parties to a marriage need not have the same surname.
- c. One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space below. The entry must consist of one of the following surnames:
  - (1) The surname of the other spouse;
  - (2) Any former surname of either spouse;
  - (3) A name combining into a single surname all or a segment of the premarrriage surname or any former surname of either spouse; or
  - (4) A combination name separated by a hyphen; provided that each part of the combination surname is the premarrriage surname or a former surname of either spouse.
- d. Use of the option under subdivision c has the effect of providing a record of the surname change. The marriage certificate containing the new surname, if any, constitutes proof that the use of the new surname, or the retention of the former surname, is lawful.
- e. Neither the use of nor the failure to use the option of selecting a new surname by means of this application, as provided in subdivision c, abrogates the right of either party to adopt a different surname through usage at a future date.

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(Optional – Enter new surname above)

regarding surname options which is consistent with section 3 of this Act.

SECTION 3. A new section to chapter 14-03 of the North Dakota Century Code is created and enacted as follows:

Surname options.

1. Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.
2. A person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname. Parties to a marriage need not have the same surname.
3. One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space provided on

the marriage license application. The entry on the application must consist of one of the following surnames:

- a. The surname of the other spouse;
  - b. Any former surname of either spouse;
  - c. A name combining into a single surname all or a segment of the premarriage surname or any former surname of either spouse; or
  - d. A combination name separated by a hyphen, provided that each part of the combination surname is the premarriage surname or former surname of either spouse.
4. Use of the option under subsection 3 has the effect of providing a record of the surname change. The marriage certificate containing the new surname, if any, constitutes proof that the use of the new surname, or the retention of the former surname, is lawful.
  5. Neither the use of nor the failure to use the option of selecting a new surname by means of a marriage license application, as provided in subsection 3, abrogates the right of either party to adopt a different surname through usage at a future date.
  6. Compliance with the surname provisions of this section is sufficient to meet the satisfactory evidence requirements of section 39-06-07.1.

Approved March 14, 1995

Filed March 14, 1995

## CHAPTER 149

## SENATE BILL NO. 2316

(Senators W. Stenehjem, Traynor)

(Representatives Clayburgh, Kretschmar, Mahoney)

## DOMESTIC RELATIONS INTERIM ORDERS

AN ACT to amend and reenact sections 14-05-23, 14-06-02, subsection 1 of section 27-10-01.1, and subsection 1 of section 27-10-01.4 of the North Dakota Century Code, relating to interim orders in domestic relations proceedings; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 14-05-23 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-05-23. Temporary support, attorney fees, and custody.** During any time in which an action for divorce is pending, the court, upon application of a party, may issue; ~~ex parte~~; an order requiring a party to pay such support as may be necessary for the support of a party and minor children of the parties and for the payment of attorney fees. The court in the order may ~~also~~ award custody of minor children to a party. The order may be issued and served in accordance with the North Dakota Rules of Court. ~~The party to whom the order is directed has the right, upon motion, to have a hearing upon the necessity for issuance of the order and any amounts to be paid. If the motion is not served and filed in the office of the clerk of the district court within five days after service of the order, the order is final and nonappealable pending a final determination of the issues raised by the pleadings or until further order of the court.~~ The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order ~~that~~ which is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

**SECTION 2. AMENDMENT.** Section 14-06-02 of the North Dakota Century Code is amended and reenacted as follows:

**14-06-02. Temporary support, attorney fees, and custody.** During any time in which an action for separation is pending, the court, upon application of a party, may issue; ~~ex parte~~; an order requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and for the payment of attorney fees and awarding. The court in the order may award custody of any minor children to any party. ~~Such orders~~ The order may be issued and served in accordance with ~~such rules as are promulgated and filed with the clerks of the district courts within the judicial district from time to time by the district judges of the judicial district.~~ The party to whom the order is directed has the right, upon motion, to have a hearing upon the necessity for the issuance of such an order or the amounts to be paid; and unless such a motion is served and filed in the office of the clerk of the district court within five days after service of an order issued under the provisions of this section, the order is final and nonappealable pending a final determination of the issues raised by the pleadings or until further order of the court the North Dakota Rules of Court.

**SECTION 3. AMENDMENT.** Subsection 1 of section 27-10-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Contempt of court" means:

- a. Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;
- b. Intentional nonpayment of a sum of money ordered by the court to be paid in a case where by law execution cannot be awarded for the collection of the sum;
- c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer including a referee or magistrate;
- d. Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;
- e. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court; ~~or~~
- f. Intentional behavior in derogation of any provision of a summons issued pursuant to rule 8.4 of the North Dakota Rules of Court; or
- g. Any other act or omission specified in the court rules or by law as a ground for contempt of court.

**SECTION 4. AMENDMENT.** Subsection 1 of section 27-10-01.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A court may impose one or more of the following remedial sanctions:

- a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;
- b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, ~~or e,~~ or f of subsection 1 of section 27-10-01.1. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;
- c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;
- d. An order designed to ensure compliance with a previous order of the court; or
- e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.

**SECTION 5. EFFECTIVE DATE.** Sections 3 and 4 of this Act are contingent on the adoption of the proposed rule 8.4 of the North Dakota Rules of Court by the North Dakota supreme court and become effective on the date the clerk of the supreme court certifies to the legislative council that the rule is in effect.

Approved March 15, 1995

Filed March 15, 1995

## CHAPTER 150

## SENATE BILL NO. 2397

(Senator W. Stenehjerm)

(Representative Kliniske)

## PROTECTION ORDERS AND ARRESTS

AN ACT to create and enact a new subsection to section 14-07.1-02 of the North Dakota Century Code, relating to an order for protection; and to amend and reenact subsection 2 of section 14-07.1-01, subsection 6 of section 14-07.1-03, sections 14-07.1-10, 14-07.1-11, and subsection 2 of section 14-07.1-13 of the North Dakota Century Code, relating to adult abuse.

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

<sup>73</sup> SECTION 1. AMENDMENT. Subsection 2 of section 14-07.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Domestic violence" includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.

SECTION 2. A new subsection to section 14-07.1-02 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

The petition for an order for protection must contain a statement listing each civil or criminal action to which both parties were a party.

SECTION 3. AMENDMENT. Subsection 6 of section 14-07.1-03 of the North Dakota Century Code is amended and reenacted as follows:

6. If the filing fee Fees for filing the application has been waived by order of the court, the court may waive the fee for and service of process by the sheriff or other appropriate law enforcement agency or may order the respondent to pay these costs not be assessed to the petitioner for any proceeding seeking relief under chapter 14-07.1.

SECTION 4. AMENDMENT. Section 14-07.1-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-10. Arrest procedures.**

1. A If a law enforcement officer's decision to arrest and charge a person for officer has probable cause to believe that a person has committed a crime involving domestic violence may not be dependent on the specific

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<sup>73</sup> Section 14-07.1-01 was also amended by section 2 of House Bill No. 1058, chapter 243.



consent of the victim, involve a consideration of the relationship of the parties, or be based solely on a request by the victim, whether the offense is a felony or misdemeanor, and whether or not the crime was committed in the presence of the officer, the law enforcement officer shall presume that arresting the person is the appropriate response.

2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately, including the comparative severity of injuries involved, to determine whether to seek an arrest warrant.
3. An individual arrested for a crime involving domestic violence may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate pursuant to rule 5 of the North Dakota Rules of Criminal Procedure.

**SECTION 5. AMENDMENT.** Section 14-07.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-11. Arrest without warrant.**

1. A law enforcement officer ~~may~~ shall arrest a person without a warrant if:
  - a. ~~The~~ the person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer; ~~or~~
  - b. ~~From.~~
2. A law enforcement officer may arrest a person without a warrant if the arrest is made within four hours from the time the officer determines there is probable cause to arrest for an assault of a family or household member as defined in section 14-07.1-01, the officer has four hours in which to make a warrantless arrest, whether or not the assault took place in the presence of the officer. After four hours has elapsed, the officer must secure an arrest warrant before making an arrest. A law enforcement officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.
- ~~2-~~ 3. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

**SECTION 6. AMENDMENT.** Subsection 2 of section 14-07.1-13 of the North Dakota Century Code is amended and reenacted as follows:

2. If the court has probable cause to believe that the person charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further acts of violence, the court ~~may~~ shall require that the person surrender for safekeeping any firearm or specified dangerous weapon in the person's immediate possession or control, or subject to the person's immediate possession or control, to the sheriff of the county or chief of police of the city in which the person resides.

Approved March 15, 1995

Filed March 15, 1995

## CHAPTER 151

### HOUSE BILL NO. 1395

(Representatives Klein, Mahoney, Sabby)  
(Senators Freborg, Solberg)

### GUARDIAN AD LITEM FEES

AN ACT to amend and reenact section 14-07.1-05.1 of the North Dakota Century Code, relating to notice of payment of guardian ad litem fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-07.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-05.1. Appointment of guardian ad litem for minor.** The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support, or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time ~~prior to~~ before the full hearing. The role of the guardian ad litem ~~shall consist~~ consists of investigation and making a recommendation and report to the court. At no time may the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem ~~shall expire~~ expires immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court, after notice to the state's attorney of the county of venue, may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 152****SENATE BILL NO. 2410**

(Senators Mushik, Thane)  
(Representative Gerntholz)

**MINORS COUNSELING INFORMATION  
CONFIDENTIALITY**

AN ACT to provide for confidentiality of private information concerning minors.

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

**SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

1. "Counseling center" means a domestic violence organization as defined in section 14-07.1-18.
2. "Private information" means any information disclosed by a minor to a counselor, employee, or volunteer at a counseling center in the course of counseling or treatment of the minor.

**SECTION 2. Confidentiality of information concerning a minor.** Except as provided in section 3 of this Act, a counseling center may not disclose private information concerning a minor to the parent, guardian, or custodian of the minor unless the minor authorizes the counseling center to disclose the information or the disclosure of the information is necessary for a party reasonably believed to be in need of protection.

**SECTION 3. Access procedures for parents.** The counseling center shall establish procedures to provide access by a parent, guardian, or custodian of a minor to private information concerning the minor, subject to the following:

1. The counseling center may deny parental access to private information when the minor, who is the subject of that information, requests that the counseling center deny the access. The counseling center shall provide the minors who seek counseling, treatment, or other assistance from the center with a notification that the minor has the right to request that parental access to private information be denied. The counseling center may require the minor submit a written request that the access be denied. The written request must set forth the reasons for denying parental access and must be signed by the minor.
2. Upon receipt of the request, the counseling center shall determine if honoring the request to deny parental access would be in the best interest of the minor. In making the determination, the counseling center shall consider the following:
  - a. Whether the minor is of sufficient age and maturity to be able to explain the reasons for and to understand the consequences of the request to deny access.

- b. Whether the personal situation of the minor is such that denying parental access may protect the minor from physical or emotional harm.
- c. Whether there is a basis for believing that the minor's reasons for denying parental access are reasonably accurate.
- d. Whether the private information in question is of a nature that disclosure of the information to a parent could lead to physical or emotional harm to the minor.
- e. Whether the private information concerns medical, dental, or other health needs of the minor and if so, the information may be released only if failure to inform the parent would seriously jeopardize the health of the minor.

Approved March 20, 1995

Filed March 20, 1995

**CHAPTER 153****SENATE BILL NO. 2334**

(Senators Yockim, Holmberg)

(Representatives Boucher, Guleson, Stenehjem)

**PROFESSIONAL LICENSE SUSPENSION FOR  
NONPAYMENT OF CHILD SUPPORT**

AN ACT to create and enact a new section to chapter 14-08.1 of the North Dakota Century Code, relating to suspension of an occupational or professional license for nonpayment of child support.

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

**SECTION 1.** A new section to chapter 14-08.1 of the North Dakota Century Code is created and enacted as follows:

**Suspension of occupational or professional license for nonpayment of child support.** When considering a contempt citation against a child support obligor who is one thousand dollars or more in arrears in child support, the court shall address and make specific findings on the issue of whether the obligor has an occupational or a professional certificate, permit, or license that the court may suspend for failure to pay child support. The court may suspend any certificate, permit, or license issued by or on behalf of the state or any of its licensing authorities or occupational or professional boards, which the obligor is required to obtain prior to engaging in the obligor's occupation or profession. Following a decision to suspend an obligor's certificate, permit, or license, the court shall notify the obligor that the decision becomes final thirty days after the notification unless the obligor satisfies or makes arrangements to pay the entire outstanding payment due. The court shall notify the appropriate licensing authority or occupational or professional board of the court's decision to suspend an obligor's certificate, permit, or license. A certificate, permit, or license suspended by an order issued under this section may be reissued only by order of the court. An appeal by an obligor who has had a certificate, permit, or license suspended under this section is an appeal from the court's order and may not be appealed to the licensing authority or occupational or professional board.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 154

### HOUSE BILL NO. 1031

(Legislative Council)

(Interim Budget Committee on Human Services)

(Representatives Svedjan, Kaldor, Payne, Poolman)

(Senators Thane, DeMers)

### DRIVER'S LICENSE SUSPENSION FOR CHILD SUPPORT NONPAYMENT

AN ACT to create and enact a new section to chapter 14-08.1 of the North Dakota Century Code, relating to suspension of motor vehicle operator's license for nonpayment of child support; and to amend and reenact section 39-06-19 of the North Dakota Century Code, relating to suspension of a motor vehicle operator's license for nonpayment of child support.

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

**SECTION 1.** A new section to chapter 14-08.1 of the North Dakota Century Code is created and enacted as follows:

Suspension of motor vehicle operator's license for nonpayment of child support. When considering a contempt citation against a child support obligor for failure to pay child support and the obligor is one thousand dollars or more in arrears, the court shall determine whether the obligor has a motor vehicle operator's license issued under chapter 39-06. The court may suspend a motor vehicle operator's license issued by the state which is held by the obligor. The court shall notify the department of transportation of the court's decision to suspend an obligor's motor vehicle operator's license. An appeal by an obligor who has had a motor vehicle operator's license suspended under this section is an appeal from the court's order and may not be appealed to the department of transportation. Except for statistical purposes, an entry on the driving record or abstract of a suspension under this section after the suspension ceases may not be available to the public other than by order of a court of competent jurisdiction. A suspension under this section is not subject to the financial responsibility reporting requirements.

**SECTION 2. AMENDMENT.** Section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-19. Expiration of license - Renewal.** Every operator's license issued under this chapter ~~shall expire~~ expires and ~~be~~ is renewed according to this section. The expiration date of operator's license for every person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of operator's license for every person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. If the licensee has reached the age of twenty-one and desires reissuance of a license without the distinctive color background required by section 39-06-14, the applicant may apply at any time for a replacement license. In all other cases, application with fee for renewal of license must be presented to the ~~commissioner~~ director not prior to ten months before the expiration date of the operator's license. ~~The commissioner~~ director may require an examination of an applicant as upon an original application. The director may not

renew an operator's license if the license has been suspended under section 1 of this Act. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order. Every application for renewal of a license by an applicant must be accompanied by a certificate of examination from either the driver licensing or examining authorities or a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of the applicant. The ~~commissioner~~ director shall provide visual examination equipment at each location where a license may be renewed. The initial application for a motor vehicle operator's license may be accompanied by a statement of examination from a licensed physician or an optometrist, stating the corrected and uncorrected vision of the applicant, in lieu of the department examination. Such examination must be within six months of the driver license application. Every person submitting an application and fee for renewal of license one year or more after the expiration of a license, except an applicant whose military service has terminated less than thirty days prior to such application, must be treated as a new driver. The fee for renewal or replacement of an operator's license is ten dollars.

Approved March 31, 1995

Filed March 31, 1995



## CHAPTER 155

## SENATE BILL NO. 2351

(Senator W. Stenehjern)

(Representative Delmore)

## CHILD SUPPORT DUTIES

AN ACT to create and enact a new section to chapter 14-09, a new section to chapter 14-17, and a new subsection to section 14-17-24 of the North Dakota Century Code, relating to child support duties; to amend and reenact sections 14-09-09.16, 14-17-08, 14-17-15, 14-17-17, and 30.1-19-05 of the North Dakota Century Code, relating to child support duties and paternity determinations; to provide an effective date; and to declare an emergency.

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

SECTION 1. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Delinquent obligor may not renounce claims. An obligor whose child support obligation is delinquent may not renounce, waive, or disclaim any interest that obligor might otherwise claim in a decedent's estate, a trust, or a similar device, to the extent necessary to satisfy the delinquency. Any attempt to renounce, waive, or disclaim such an interest is void if attempted after notice of the delinquency is furnished to the person administering the estate, trust, or similar device, and is otherwise voidable.

<sup>74</sup> SECTION 2. AMENDMENT. Section 14-09-09.16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.16. Service of income withholding order on income payor. The clerk of court shall serve the income withholding order and a copy of sections 14-09-09.3 and 14-09-09.15 on the income payor in the manner provided for service of a summons in a civil action and upon the obligor by first-class mail to the obligor's last known address, within fifteen days of the date of the notice made pursuant to section 14-09-09.13 or 14-09-09.20, unless the obligor has contested that notice within ten days of the date of that notice. If a hearing was held under section 14-09-09.14 or 14-09-09.21, the income withholding order and the copy of ~~this chapter~~ sections 14-09-09.3 and 14-09-09.15 must be served within five working days of the date of the court's determination. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order and a copy of ~~this chapter~~ sections 14-09-09.3 and 14-09-09.15 must be served on any known income payor within five working days of the issuance of the judgment or order which requires the payment of child support. Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order and a copy of ~~this chapter~~ sections 14-09-09.3 and 14-09-09.15 must be served on any subsequently

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<sup>74</sup> Section 14-09-09.16 was also amended by section 1 of Senate Bill No. 2069, chapter 157.

identified income payor within five working days after the clerk is informed of the name and address of such an income payor. An income withholding order may also be issued and served at the request of the obligor. The income withholding order shall state all of the following:

1. That the obligor is properly subject to an income withholding order and that the income payor is therefore required to withhold ~~an~~ a stated amount, determined under subsection 3 of section 14-09-09.13, from the obligor's income at the time the obligor is paid for transmittal to the clerk of court within ten working days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.
2. That the income payor may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
3. That the amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.
4. That the income payor shall begin withholding no later than the first pay period that occurs fourteen days after service of the income withholding order.
5. That if the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the clerk of court that portion thereof which the obligee's claim bears to the combined total of all claims.
6. That the income payor shall notify the clerk of court in writing of the termination of a duty to pay income to the obligor within fifteen days of such termination. Such notification must include the name and address of the obligor's subsequent income payor, if known.
7. That if the income payor is subject to income withholding orders for more than one obligor, the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same clerk of court with identification of the amount attributable to each obligor.
8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14-09-09.3.
9. That the withholding order has priority over any other legal process under state law against the same wages.
10. If appropriate, that the obligor is required to provide health insurance coverage for a child who is the subject of a child support order.

11. When an obligor employed by an income payor terminates that employment, the income payor must promptly so notify the clerk and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

**SECTION 3. AMENDMENT.** Section 14-17-08 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-08. Parties.** The child must be made a party to the action. ~~If he~~ A child who is a minor ~~he~~ must be represented by ~~his general guardian the child's parent whose parentage has been established under section 14-17-03~~ or a guardian ad litem appointed by the court. ~~The child's mother or father may not represent the child as guardian or otherwise.~~ The court may appoint the director of the county social service board as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 14-17-04, and each man alleged to be the natural father, must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

**SECTION 4.** A new section to chapter 14-17 of the North Dakota Century Code is created and enacted as follows:

Default.

1. Except as provided in subsection 3, if a person alleged to be the father in an action to determine the existence of the father and child relationship has failed after service of process to plead or otherwise appear within the time permitted under the rules of civil procedure, and the fact is made to appear by affidavit or otherwise, the court shall direct the clerk to enter an appropriate judgment by default establishing the existence of the father and child relationship.
2. Except as provided in subsection 3, if a person alleged to be the father in an action to determine the existence of the father and child relationship has pled or appeared in the action, but has failed to appear at a scheduled hearing, conference, or trial, or failed to appear for or refused to submit to genetic testing, and those facts are made to appear by affidavit or otherwise, the person, or if appearing by representative, the person's representative, must be served with written notice of the application for judgment at least eight days before the hearing on the application. If the person fails to appear at the hearing on the application or appears but fails either to cure a previous failure or refusal, or to provide satisfactory assurance of the person's willingness to cure a previous failure or refusal, the court shall direct the clerk to enter an appropriate judgment by default establishing the existence of the father and child relationship.
3. Judgment of default may not be entered:
  - a. When service of process has been made by published notice or by delivery of a copy without the state, until it is shown, by affidavit or otherwise, that the person is a presumed father or, if not a presumed father, that the person engaged in sexual intercourse with the child's mother at any possible time of conception;

- b. Against a minor unless represented in the action by a parent, general guardian, or guardian ad litem;
  - c. Against an incompetent person unless represented in the action by a guardian with sufficient authority; or
  - d. If more than one person was alleged to be the father, and the evidence establishes the existence of the father and child relationship between the child and a person who has appeared and participated in the action.
4. If the operation of this section requires the entry of judgments of default establishing the existence of the father and child relationship between a child and two or more persons, the court may grant relief from any of those judgments, on such terms as may be just, notwithstanding the passage of any period of time.

**SECTION 5. AMENDMENT.** Section 14-17-15 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-15. Costs.** The court may order reasonable fees of ~~counsel~~, experts; and the child's guardian ad litem; and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county social service board of the county in which the child resides or is found. In addition, the court may award reasonable attorney's fees if an award is permitted under chapter 28-26.

**SECTION 6. AMENDMENT.** Section 14-17-17 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-17. Modification of judgment or order.** The court has continuing jurisdiction to modify ~~or revoke~~ a judgment or order:

- 1. ~~For~~ for future education and support; and
- 2. ~~With respect to matters listed in subsections 3 and 4 of section 14-17-14 and subsection 2 of section 14-17-16; except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under subsection 4 of section 14-17-14 may specify that the judgment or order may not be modified or revoked.~~

**SECTION 7.** A new subsection to section 14-17-24 of the North Dakota Century Code is created and enacted as follows:

A termination of parental rights ordered under this section does not terminate the duty of either parent to support the child prior to the child's adoption unless that duty is specifically terminated by order of the court after notice of a proposed termination or relinquishment is given to the department of human services in the manner appropriate for the service of process in a civil action in this state.

**SECTION 8. AMENDMENT.** Section 30.1-19-05 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-19-05. (3-805) Classification of claims.**

1. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
  - a. Costs and expenses of administration.
  - b. Reasonable funeral expenses.
  - c. Debts and taxes with preference under federal law.
  - d. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him.
  - e. The decedent's child support obligations that were due and unpaid before death.
  - f. Debts and taxes with preference under other laws of this state.
  - ~~f.~~ g. All other claims.
2. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

**SECTION 9. EFFECTIVE DATE.** Section 4 of this Act becomes effective April 1, 1995, if the fifty-fourth legislative assembly adjourns sine die on or before March 31, 1995, but otherwise becomes effective July 1, 1995.

**SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 5, 1995  
Filed April 6, 1995

**CHAPTER 156****HOUSE BILL NO. 1032**

(Legislative Council)  
(Interim Budget Committee on Human Services)  
(Representatives Rydell, Svedjan, Kaldor)  
(Senators Thane, Mathern, DeMers)

**PATERNITY ACKNOWLEDGMENT PROCEDURES**

AN ACT to create and enact a new chapter to title 14 and a new section to chapter 14-09 of the North Dakota Century Code, relating to the establishment of paternity; to amend and reenact section 14-17-11 of the North Dakota Century Code, relating to the use of genetic tests in paternity proceedings; to provide an effective date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Full faith and credit for paternity determinations. In any proceeding in which paternity or nonpaternity of a child is alleged, full faith and credit must be given to a determination of paternity by another state, made before a determination of paternity under the laws of this state, whether established through voluntary acknowledgment or through administrative or judicial process.

**SECTION 2.** A new chapter to title 14 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Birthing hospital" means a hospital licensed under chapter 23-16 which provides obstetrical services.
2. "Department" means the department of human services.
3. "Donor" means a woman whose body produced an egg for the purposes of assisted conception, but does not include a woman whose body produces an egg used for the purpose of conceiving a child for that woman.
4. "Gestational carrier" means a woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.
5. "Married woman" includes a woman who attempted to marry by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid.
6. "Mother" means a woman who gives birth to a child or, if pregnancy resulted from assisted conception, the woman who is the donor but not the woman who is the gestational carrier.

7. "Party" means the man with whom the relationship of father and child is sought or established, the child's mother, and, for purposes of proceedings to relieve a party of the relationship of father and child, the child.
8. "Relationship of father and child" means the legal relationship existing between a father and his natural or adoptive child incident to which the law confers or imposes rights, privileges, duties, and obligations.

Construction of chapter - Place of acknowledgment or birth need not be within this state. This chapter is a remedial law and is to be broadly construed to provide a simple civil process for establishing the relationship of father and child through voluntary acknowledgment of paternity. This chapter may be applied to establish the relationship of father and child with respect to children not born in this state. A voluntary acknowledgment executed or acknowledged outside this state is effective under this chapter if the acknowledgment substantially complies with the requirements of this chapter.

Establishment of relationship of father and child. The relationship of father and child may be established by an acknowledgment of paternity, signed by both parents, given before a witness if:

1. The acknowledgment is made on a form, approved by the department, which provides:
  - a. Instructions for filing the acknowledgment with the department of health and consolidated laboratories;
  - b. Places for entry of the parents' names, addresses, and social security numbers; parents' signatures; and witnesses' signatures; and
2. The witness, or any agent of a child support agency, verifies that the parents have been provided:
  - a. Written materials about paternity establishment, including the manner in which the relationship of father and child established under this chapter may be vacated; and
  - b. A written description of the rights and responsibilities of acknowledging paternity.

Effect of voluntary acknowledgment of paternity - Who may dispute. The relationship of father and child established under this chapter has the force and effect of a relationship of father and child established through judgment of a court of competent jurisdiction. This is a presumption establishing paternity, and must be recognized as a basis for a support order, in any proceeding to establish, enforce, or modify a child support order, with no further proceedings to establish paternity. The establishment of the relationship may be contradicted only as provided in this chapter.

Filing of acknowledgment. An acknowledgment of paternity made under this chapter must be filed with the department of health and consolidated laboratories. Upon request of the department, the department of health and consolidated laboratories shall furnish a certified copy of an acknowledgment of paternity to the department.

Hospital-based program for acknowledgment of paternity - Effect of noncompliance.

1. During the period immediately preceding or following the birth of a child to an unmarried woman in a birthing hospital, the hospital, at a minimum, shall:
  - a. Provide to the mother and the alleged father, if he is present in the hospital:
    - (1) Written materials about paternity establishment;
    - (2) The forms necessary to voluntarily acknowledge paternity;
    - (3) A written description of the rights and responsibilities of acknowledging paternity; and
    - (4) The opportunity to speak, either by telephone or in person, with staff who are trained to clarify information and answer questions about paternity establishment;
  - b. Provide the mother and the alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital;
  - c. Afford due process safeguards by informing, in writing, the mother and the alleged father, if he is present, of the manner in which a relationship of father and child established under this chapter may be vacated; and
  - d. Forward completed acknowledgments to the department of health and consolidated laboratories.
2. The department may withhold medical assistance payments from any hospital that fails to comply with this section. At least thirty days in advance of any withholding, the department shall notify the hospital of the department's intention to withhold medical assistance payments from the hospital. The hospital may appeal the decision to withhold medical assistance benefits to the department.

Immunity from liability. A hospital, its agents, or its employees acting in accordance with this Act or attempting in good faith to do so are immune from civil liability for that activity.

Powers and duties of the department. The department shall:

1. Provide each birthing hospital in the state:
  - a. Written materials about paternity establishment.
  - b. Forms necessary to voluntarily acknowledge paternity.
  - c. A written description of the rights and responsibilities of acknowledging paternity.



2. Provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity reasonably necessary to assist a birthing hospital in its duties under this chapter.
3. In cooperation with the department of health and consolidated laboratories, secure information on each birthing hospital's paternity acknowledgment program at least annually.
4. In cases involving applications for child support services made to a child support agency which require paternity establishment, determine if a voluntary paternity acknowledgment has been filed with the department of health and consolidated laboratories.

When acknowledgment is voidable. An acknowledgment of paternity for a child born to a married woman is voidable unless:

1. The man acknowledging paternity was the woman's husband at the time of the child's birth; or
2. The acknowledgment is agreed to in writing by each man who was the woman's husband within three hundred days before the child's birth.

Vacation of acknowledgments - Time for commencing actions - Effect on presumptions under section 14-17-04 - Notice.

1. An acknowledgment of paternity made under this chapter may be vacated:
  - a. By a notarized writing signed by either the father or the mother and filed with the department of health and consolidated laboratories within ten days after the execution of the acknowledgment of paternity;
  - b. By order of the district court upon a showing, by a party, that an acknowledgment of paternity made under this chapter was the result of mistake, fraud, or misrepresentation by another party, or any other reason justifying relief;
  - c. By order of the district court upon a showing that a voidable acknowledgment of paternity made concerning the birth of a child to a married woman should be made void; or
  - d. By the department of health and consolidated laboratories upon receipt of two or more acknowledgments of paternity concerning the same child.
2. A party shall commence a claim for relief under subdivision b of subsection 1 within one year after execution of the acknowledgment of paternity. This limitation may only be extended:
  - a. Due to the minority of a child in a case brought by the child with respect to whom the relationship of father and child was established; or
  - b. Upon a showing that continued enforcement of a judgment based on an acknowledgment of paternity made under this chapter would

be manifestly unjust and unconscionable to all parties; that the party seeking relief was prevented by fraud or fraudulent concealment from discovering the claim for relief; and that the claim is commenced within one year after the claim was discovered or might, in the exercise of diligence, have been discovered.

3. The vacation of an acknowledgment of paternity under this section does not affect any presumption of paternity provided under section 14-17-04.
4. If the department of health and consolidated laboratories vacates an acknowledgment under this section, it promptly shall provide notice of its action to the mother, to each acknowledged father of the child, and, if the department has requested a certified copy of any vacated acknowledgment, to the department.

**SECTION 3. AMENDMENT.** Section 14-17-11 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-11. Evidence relating to paternity.** Evidence relating to paternity may include:

1. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.
2. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.
3. Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. Verified documentation of the chain of custody of the genetic specimens is competent evidence to establish the chain of custody. A verified report obtained from an examiner appointed pursuant to section 14-17-10 must be admitted at trial unless a challenge written objection to the testing procedures or the results of genetic analysis has been made at least ten days before trial or at an earlier time determined by the court.
4. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests.
5. A voluntary acknowledgment of paternity executed under this Act.
6. All other evidence relevant to the issue of paternity of the child.

**SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act become effective April 1, 1995, if the fifty-fourth legislative assembly adjourns sine die on or before March 31, 1995, but otherwise become effective July 1, 1995.

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

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 157****SENATE BILL NO. 2069**

(Legislative Council)

(Interim Judiciary Committee)

(Senators W. Stenehjem, Traynor)

(Representatives Klein, Brown, Kretschmar)

**UNIFORM INTERSTATE FAMILY SUPPORT ACT**

AN ACT to create and enact chapter 14-12.2 of the North Dakota Century Code, relating to the Uniform Interstate Family Support Act; to amend and reenact sections 14-09-09.16 and 14-09-09.26 of the North Dakota Century Code, relating to child support enforcement procedures; and to repeal sections 14-09-09.19, 14-09-09.20, 14-09-09.21, 14-09-09.22, and chapter 14-12.1 of the North Dakota Century Code, relating to interstate income withholding and the Revised Uniform Reciprocal Enforcement of Support Act (1968).

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

<sup>75</sup> **SECTION 1. AMENDMENT.** Section 14-09-09.16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.16. Service of income withholding order on income payor.** The clerk of court shall serve the income withholding order and a copy of sections 14-09-09.3 and 14-09-09.15 on the income payor in the manner provided for service of a summons in a civil action and upon the obligor by first-class mail to the obligor's last known address, within fifteen days of the date of the notice made pursuant to section 14-09-09.13 ~~or 14-09-09.20~~, unless the obligor has contested that notice within ten days of the date of that notice. If a hearing was held under section 14-09-09.14 ~~or 14-09-09.21~~, the income withholding order and the copy of this chapter must be served within five working days of the date of the court's determination. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order and a copy of this chapter must be served on any known income payor within five working days of the issuance of the judgment or order which requires the payment of child support. Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order and a copy of this chapter must be served on any subsequently identified income payor within five working days after the clerk is informed of the name and address of such an income payor. An income withholding order may also be issued and served at the request of the obligor. The income withholding order shall state all of the following:

1. That the obligor is properly subject to an income withholding order and that the income payor is therefore required to withhold an amount, determined under subsection 3 of section 14-09-09.13, from the obligor's income at the time the obligor is paid for transmittal to the clerk of court

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<sup>75</sup> Section 14-09-09.16 was also amended by section 2 of Senate Bill No. 2351, chapter 155.

within ten working days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.

2. That the income payor may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
3. That the amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.
4. That the income payor shall begin withholding no later than the first pay period that occurs fourteen days after service of the income withholding order.
5. That if the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the clerk of court that portion thereof which the obligee's claim bears to the combined total of all claims.
6. That the income payor shall notify the clerk of court in writing of the termination of a duty to pay income to the obligor within fifteen days of such termination. Such notification must include the name and address of the obligor's subsequent income payor, if known.
7. That if the income payor is subject to income withholding orders for more than one obligor, the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same clerk of court with identification of the amount attributable to each obligor.
8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14-09-09.3.
9. That the withholding order has priority over any other legal process under state law against the same wages.
10. If appropriate, that the obligor is required to provide health insurance coverage for a child who is the subject of a child support order.
11. When an obligor employed by an income payor terminates that employment, the income payor must promptly so notify the clerk and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

**SECTION 2. AMENDMENT.** Section 14-09-09.26 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.26. State is real party in interest. The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted under section 14-09-08.9 or 14-09-08.13.
3. ~~Whenever a support order of another state is received with the documentation required by subsection 2 of section 14-09-09.19.~~
4. Whenever duties are imposed on the state or its public officials under ~~chapter 14-12.1~~ 14-12.2.

SECTION 3. Chapter 14-12.2 of the North Dakota Century Code is created and enacted as follows:

14-12.2-01. (101) Definitions. As used in this chapter:

1. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
2. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.
3. "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
4. "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month period or other period.
5. "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.
6. "Income-withholding order" means an order or other legal process directed to an obligor's income payor to withhold support from the income of the obligor.
7. "Initiating state" means a state in which a proceeding under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state.

8. "Initiating tribunal" means the authorized tribunal in an initiating state.
9. "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.
10. "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.
11. "Law" includes decisional and statutory law and rules having the force of law.
12. "Obligee" means:
  - a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
  - b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
  - c. An individual seeking a judgment determining parentage of the individual's child.
13. "Obligor" means an individual, or the estate of a decedent:
  - a. Who owes or is alleged to owe a duty of support;
  - b. Who is alleged but has not been adjudicated to be a parent of a child; or
  - c. Who is liable under a support order.
14. "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.
15. "Registering tribunal" means a tribunal in which a support order is registered.
16. "Responding state" means a state to which a proceeding is forwarded under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
17. "Responding tribunal" means the authorized tribunal in a responding state.
18. "Spousal-support order" means a support order for a spouse or former spouse of the obligor.
19. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established

procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter.

20. "Support enforcement agency" means a public official or agency authorized to seek:
- a. Enforcement of support orders or laws relating to the duty of support;
  - b. Establishment or modification of child support;
  - c. Determination of parentage; or
  - d. Location of obligors or their assets.
21. "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.
22. "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

14-12.2-02. (102) Tribunal of this state. The district court is the tribunal of this state.

14-12.2-03. (103) Remedies cumulative. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

14-12.2-04. (201) Bases for jurisdiction over nonresident. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with a summons within this state;
2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
3. The individual resided with the child in this state;
4. The individual resided in this state and provided prenatal expenses or support for the child;
5. The child resides in this state as a result of the acts or directives of the individual;
6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
7. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

14-12.2-05. (202) Procedure when exercising jurisdiction over nonresident. A tribunal of this state exercising personal jurisdiction over a nonresident under section 14-12.2-04 may apply section 14-12.2-28 to receive evidence from another state, and section 14-12.2-30 to obtain discovery through a tribunal of another state. In all other respects, sections 14-12.2-13 through 14-12.2-47 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

14-12.2-06. (203) Initiating and responding tribunal of this state. Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

14-12.2-07. (204) Simultaneous proceedings in another state.

1. If the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state, a tribunal of this state may exercise jurisdiction to establish a support order only if:
  - a. The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
  - b. The contesting party timely challenges the exercise of jurisdiction in the other state; and
  - c. If relevant, this state is the home state of the child.
2. If the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state, a tribunal of this state may not exercise jurisdiction to establish a support order if:
  - a. The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
  - b. The contesting party timely challenges the exercise of jurisdiction in this state; and
  - c. If relevant, the other state is the home state of the child.

14-12.2-08. (205) Continuing, exclusive jurisdiction.

1. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:
  - a. As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
  - b. Until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.



2. A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.
3. If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:
  - a. Enforce the order that was modified as to amounts accruing before the modification;
  - b. Enforce nonmodifiable aspects of that order; and
  - c. Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.
4. A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this chapter.
5. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.
6. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

14-12.2-09. (206) Enforcement and modification of support order by tribunal having continuing jurisdiction.

1. A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.
2. A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 14-12.2-28 to receive evidence from another state and section 14-12.2-30 to obtain discovery through a tribunal of another state.
3. A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

14-12.2-10. (207) Recognition of child support orders.

1. If a proceeding is brought under this chapter, and one or more child support orders have been issued in this or another state with regard to

an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

- a. If only one tribunal has issued a child support order, the order of that tribunal must be recognized.
  - b. If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal must be recognized.
  - c. If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.
  - d. If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state may issue a child support order, which must be recognized.
2. The tribunal that has issued an order recognized under subsection 1 is the tribunal having continuing, exclusive jurisdiction.

14-12.2-11. (208) Multiple child support orders for two or more obligees. In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

14-12.2-12. (209) Credit for payments. Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

14-12.2-13. (301) Proceedings under this chapter.

1. Except as otherwise provided in this chapter, sections 14-12.2-13 through 14-12.2-31 apply to all proceedings under this chapter.
2. This chapter provides for the following proceedings:
  - a. Establishment of an order for spousal support or child support under section 14-12.2-32;
  - b. Enforcement of a support order and income-withholding order of another state without registration under sections 14-12.2-33 and 14-12.2-34;

- c. Registration of an order for spousal support or child support of another state for enforcement under sections 14-12.2-35 through 14-12.2-46;
  - d. Modification of an order for child support or spousal support issued by a tribunal of this state under sections 14-12.2-06 through 14-12.2-09;
  - e. Registration of an order for child support of another state for modification under sections 14-12.2-35 through 14-12.2-46;
  - f. Determination of parentage under section 14-12.2-47; and
  - g. Assertion of jurisdiction over nonresidents under sections 14-12.2-04 and 14-12.2-05.
3. An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

14-12.2-14. (302) Action by minor parent. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

14-12.2-15. (303) Application of law of this state. Except as otherwise provided by this chapter, a responding tribunal of this state:

1. Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and
2. Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

14-12.2-16. (304) Duties of initiating tribunal. Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:

1. To the responding tribunal or appropriate support enforcement agency in the responding state; or
2. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that the petitions and documents be forwarded to the appropriate tribunal and that receipt be acknowledged.

14-12.2-17. (305) Duties and powers of responding tribunal.

1. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly under subsection 3 of section 14-12.2-13, it shall cause the petition or pleading

to be filed and notify the petitioner by first-class mail where and when it was filed.

2. A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:
  - a. Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
  - b. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
  - c. Order income withholding;
  - d. Determine the amount of any arrearages, and specify a method of payment;
  - e. Enforce orders by civil or criminal contempt, or both;
  - f. Set aside property for satisfaction of the support order;
  - g. Place liens and order execution on the obligor's property;
  - h. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
  - i. Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
  - j. Order the obligor to seek appropriate employment by specified methods;
  - k. Award reasonable attorney's fees and other fees and costs; and
  - l. Grant any other available remedy.
3. A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.
4. A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.
5. If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

14-12.2-18. (306) Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by first-class mail where and when the pleading was sent.

14-12.2-19. (307) Duties of support enforcement agency.

1. A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.
2. A support enforcement agency that is providing services to the petitioner as appropriate shall:
  - a. Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;
  - b. Request an appropriate tribunal to set a date, time, and place for a hearing;
  - c. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
  - d. Within two business days, exclusive of Saturdays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first-class mail to the petitioner;
  - e. Within two business days, exclusive of Saturdays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first-class mail to the petitioner; and
  - f. Notify the petitioner if jurisdiction over the respondent cannot be obtained.
3. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

14-12.2-20. (308) Duty of attorney general. If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

14-12.2-21. (309) Private counsel. An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

14-12.2-22. (310) Duties of state information agency.

1. The department of human services is the state information agency under this chapter.
2. The state information agency shall:
  - a. Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state.
  - b. Maintain a register of tribunals and support enforcement agencies received from other states.

- c. Forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state.
- d. Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

14-12.2-23. (311) Pleadings and accompanying documents.

1. A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under section 14-12.2-24, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.
2. The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

14-12.2-24. (312) Nondisclosure of information in exceptional circumstances. Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

14-12.2-25. (313) Costs and fees.

1. The petitioner may not be required to pay a filing fee or other costs.
2. If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

3. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under sections 14-12.2-35 through 14-12.2-46, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

14-12.2-26. (314) Limited immunity of petitioner.

1. Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.
2. A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.
3. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.

14-12.2-27. (315) Nonparentage as defense. A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

14-12.2-28. (316) Special rules of evidence and procedure.

1. The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.
2. A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.
3. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.
4. Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.
5. Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.
6. In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall

cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

7. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.
8. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.
9. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

14-12.2-29. (317) Communications between tribunals. A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

14-12.2-30. (318) Assistance with discovery. A tribunal of this state may:

1. Request a tribunal of another state to assist in obtaining discovery; and
2. Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

14-12.2-31. (319) Receipt and disbursement of payments. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

14-12.2-32. (401) Petition to establish support order.

1. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:
  - a. The individual seeking the order resides in another state; or
  - b. The support enforcement agency seeking the order is located in another state.
2. The tribunal may issue a temporary child support order if:
  - a. The respondent has signed a verified statement acknowledging parentage;
  - b. The respondent has been determined by or pursuant to law to be the parent; or
  - c. There is other clear and convincing evidence that the respondent is the child's parent.



3. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders under section 14-12.2-17.

14-12.2-33. (501) Recognition of income-withholding order of another state.

1. An income-withholding order issued in another state may be sent by first-class mail to the obligor's employer without first filing a petition or comparable pleading or registering the order with a tribunal of this state. Upon receipt of the order, the employer shall:
  - a. Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state;
  - b. Immediately provide a copy of the order to the obligor; and
  - c. Distribute the funds as directed in the withholding order.
2. An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state. Section 14-12.2-38 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:
  - a. The person or agency designated to receive payments in the income-withholding order; or
  - b. If no person or agency is designated, the obligee.

14-12.2-34. (502) Administrative enforcement of orders.

1. A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.
2. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

14-12.2-35. (601) Registration of order for enforcement. A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

14-12.2-36. (602) Procedure to register order for enforcement.

1. A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the appropriate tribunal in this state:

- a. A letter of transmittal to the tribunal requesting registration and enforcement;
  - b. Two copies, including one certified copy, of all orders to be registered, including any modification of an order;
  - c. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
  - d. The name of the obligor and, if known:
    - (1) The obligor's address and social security number;
    - (2) The name and address of the obligor's employer and any other source of income of the obligor; and
    - (3) A description and the location of property of the obligor in this state not exempt from execution; and
  - e. The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
2. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.
  3. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

14-12.2-37. (603) Effect of registration for enforcement.

1. A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.
2. A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.
3. Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

14-12.2-38. (604) Choice of law.

1. The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.
2. In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

14-12.2-39. (605) Notice of registration of order.

1. When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
2. The notice must inform the nonregistering party:
  - a. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
  - b. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice;
  - c. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
  - d. Of the amount of any alleged arrearages.
3. Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer.

14-12.2-40. (606) Procedure to contest validity or enforcement of registered order.

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 14-12.2-41.
2. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

14-12.2-41. (607) Contest of registration or enforcement.

1. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
  - a. The issuing tribunal lacked personal jurisdiction over the contesting party;

- b. The order was obtained by fraud;
  - c. The order has been vacated, suspended, or modified by a later order;
  - d. The issuing tribunal has stayed the order pending appeal;
  - e. There is a defense under the law of this state to the remedy sought;
  - f. Full or partial payment has been made; or
  - g. The statute of limitation under section 14-12.2-38 precludes enforcement of some or all of the arrearages.
2. If a party presents evidence establishing a full or partial defense under subsection 1, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.
3. If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

14-12.2-42. (608) Confirmed order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

14-12.2-43. (609) Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in sections 14-12.2-35 through 14-12.2-38 of this article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

14-12.2-44. (610) Effect of registration for modification. A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 14-12.2-45 have been met.

14-12.2-45. (611) Modification of child support order of another state.

1. After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if, after notice and hearing, it finds that:
- a. The following requirements are met:
- (1) The child, the individual obligee, and the obligor do not reside in the issuing state;

- (2) A petitioner who is a nonresident of this state seeks modification; and
- (3) The respondent is subject to the personal jurisdiction of the tribunal of this state; or
  - b. An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the support order and assume continuing, exclusive jurisdiction over the order.
2. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.
3. A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state.
4. On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.
5. Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered.

14-12.2-46. (612) Recognition of order modified in another state. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

1. Enforce the order that was modified only as to amounts accruing before the modification;
2. Enforce only nonmodifiable aspects of that order;
3. Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
4. Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

14-12.2-47. (701) Proceeding to determine parentage.

1. A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

2. In a proceeding to determine parentage, a responding tribunal of this state shall apply section 14-12.2-28 and chapter 14-17.

14-12.2-48. (801) Grounds for rendition.

1. For purposes of sections 14-12.2-48 and 14-12.2-49, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.
2. The governor of this state may:
  - a. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or
  - b. On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.
3. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

14-12.2-49. (802) Conditions of rendition.

1. Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.
2. If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.
3. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

**SECTION 4. REPEAL.** Sections 14-09-09.19, 14-09-09.20, 14-09-09.21, 14-09-09.22, and chapter 14-12.1 of the North Dakota Century Code are repealed.

Approved March 10, 1995  
Filed March 13, 1995

## CHAPTER 158

## SENATE BILL NO. 2490

(Senator C. Nelson)

(Representatives Hanson, Kroeber)

## ASSISTED CONCEPTION

AN ACT to create and enact a new section to chapter 14-18 of the North Dakota Century Code, relating to paternity; to amend and reenact section 14-18-01 of the North Dakota Century Code, relating to the establishment of paternity; to repeal section 14-18-02 of the North Dakota Century Code, relating to the establishment of maternity; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 14-18-01 of the North Dakota Century Code is amended and reenacted as follows:

14-18-01. Definitions. As used in ~~sections 14-18-01 through 14-18-07~~ this chapter:

1. "Assisted conception" means a pregnancy resulting from insemination of an egg of a woman with sperm of a man by means other than sexual intercourse or by removal and implantation of an embryo after sexual intercourse, but does not include ~~the a pregnancy of a wife~~ resulting from the insemination of her an egg of a wife using her husband's sperm.
2. "Donor" means an individual whose body produces sperm or egg used for the purpose of assisted conception, whether or not a payment is made for the sperm or egg used, but does not include ~~a woman who gives birth to a resulting child~~ an individual whose body produces sperm or egg used for the purpose of conceiving a child for that individual.
3. "Gestational carrier" means an adult woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.
4. "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents.

SECTION 2. A new section to chapter 14-18 of the North Dakota Century Code is created and enacted as follows:

Paternity. Paternity of a child born to a gestational carrier is governed by chapter 14-17.

SECTION 3. REPEAL. Section 14-18-02 of the North Dakota Century Code is repealed.

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

Approved March 17, 1995

Filed March 20, 1995



# EDUCATION

## CHAPTER 159

### HOUSE BILL NO. 1215

(Representative Dalrymple)  
(Senator G. Nelson)

## AGRONOMY SEED FARM PROPERTY CONVEYANCE

AN ACT to authorize the state of North Dakota and the North Dakota state board of higher education, for the use and benefit of North Dakota state university agricultural experiment station otherwise known as the agronomy seed farm, to convey certain state-owned land to the city of Casselton, North Dakota.

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

### SECTION 1. Transfer of land authorized.

1. The state of North Dakota and the North Dakota state board of higher education, for the use and benefit of North Dakota state university agricultural experiment station otherwise known as the agronomy seed farm, may convey to the city of Casselton, North Dakota, land owned by the state which is located in Cass County and described as follows:

The East 33 feet of the South 1,611.20 feet of the Southeast Quarter (SE 1/4) of Section Three (3), Township One Hundred Thirty-nine (139) North, Range Fifty-two (52) West, Cass County, North Dakota less the South 50 feet thereof.

2. The conveyance authorized by this Act is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
3. The attorney general shall review and approve as to form and legality all legal documents required for the conveyance authorized by this Act, including title opinions.

Approved March 15, 1995  
Filed March 15, 1995

**CHAPTER 160****SENATE BILL NO. 2355**

(Senator Thane)

**HIGHER EDUCATION RICHLAND COUNTY LAND  
CONVEYANCE**

AN ACT to authorize the state board of higher education to sell certain land.

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

**SECTION 1. Transfer of land authorized.**

1. The state board of higher education may sell land owned by the board which is located in Richland County and described as follows:
  - a. That part of Block numbered Two (2) of State School of Science Addition to the City of Wahpeton, Richland County, North Dakota, described as follows: Beginning at the Northwest corner of Block Two (2) of Rosemeade Addition to the said City of Wahpeton, which is also on the South line of Fourteenth Avenue North in the said City of Wahpeton; thence South, on the West line of said Block Two (2), a distance of 158.8 feet, to the Southwest corner of said Block Two (2); thence South 89°01' East, on the North line of the property of described as Tracts 2 and 3 in Document Number 259871 (as said document is recorded in the Office of the Richland County Register of Deeds'), which is also the South line of the Northeast portion of said Block Two (2) of State School of Science Addition, a distance of 300.42 feet, to the Northwest corner of the said property as described in Tract 3 in Document Number 259871; thence North 0°13' East, on the extended West line of the said property as described in Tract 3 in Document Number 259871, to the said South line of Fourteenth Avenue North; thence Northeast and East, on the said South line of Fourteenth Avenue North, to the point of beginning.
2. The conveyance authorized by this Act is exempt from sections 54-01-05.2 and 54-01-05.5. However, the conveyance may only be made after the property has been appraised and sold at public auction. At the public auction the property may not be sold for less than the minimum appraised value. If no bid that equals or exceeds the minimum appraised value is received at the auction, the board may negotiate a price for the land with a purchaser. The price negotiated may not be less than greater of the highest bid received at the public auction or ninety percent of the minimum appraised value. All moneys realized from the sale must be deposited in the general fund in the state treasury.
3. The attorney general shall review and approve as to form and legality all legal documents required for the conveyance authorized by this Act, including title opinions.

Approved April 13, 1995  
Filed April 18, 1995

**CHAPTER 161****SENATE BILL NO. 2179**

(Political Subdivisions Committee)

(At the request of the Office of Management and Budget)

**BOARD OF UNIVERSITY AND SCHOOL LANDS STARK  
COUNTY PROPERTY TRANSFER**

AN ACT to amend and reenact section 1 of chapter 367 of the 1963 Session Laws, relating to the deed to property formerly owned by the state at Bathgate, North Dakota; to provide for issuance of a new deed for the Bathgate property; and to authorize the board of university and school lands to convey certain state-owned land to Stark County, North Dakota.

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

**SECTION 1. AMENDMENT.** Section 1 of chapter 367 of the 1963 Session Laws is amended and reenacted as follows:

1. The board of administration is hereby authorized to sell all buildings and lands formerly used as the school for the blind at Bathgate to the Pembina County pioneer rest home, a North Dakota nonprofit corporation, for the consideration of one dollar. The provisions of this Act shall not be construed as authorizing the sale of land in excess of forty acres. ~~The deed of conveyance shall contain a provision for a reversion to the state of North Dakota of all right, title and interest in the property should the property cease to be used as a home for the aged by a nonprofit corporation.~~

**SECTION 2. ISSUANCE OF NEW DEED.** The office of management and budget shall arrange for issuance of a corrective deed to Pembina County pioneer rest home to reflect the amendment made by section 1 of this Act. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the deed issued under this section.

**SECTION 3. Transfer of land authorized.**

1. The board of university and school lands may convey to Stark County, North Dakota, land owned by the state which is located in Stark County and described as follows:

A tract of land in Stark County located in Section 5, Township 139 North, Range 96 West, described as the State Addition less the following tracts: (1) Lot 1 of Block 34; (2) A tract of land consisting of Lots 1-10 of Block 1; Lots 1-26 of Block 2; Lots 1-30 of Block 3; and all of 18th Ave. West and 19th Ave. West lying between the north property line of Fairway Street and the south property line of Empire Road, all of the above lots, blocks and avenues described in tract (2) being located in the State Addition of Dickinson, North Dakota, and being more particularly described as follows, to wit:

Beginning at a point 40 feet west and 40 south of the northeast corner of said Section 5, said point also being the northeast property corner of Lot 1, Block 1 of said State Addition; thence South 00 15'34" East along the east property line of said Block 1 a distance of 1,225.49 feet to the southeast property corner of Lot 10 of said Block 1; thence westerly on a bearing of South 89 49'34" West along the south property lines of said Blocks 1, 2, and 3 a distance of 785.00 feet to the southwest property corner of Lot 16 of said Block 3; thence northerly along the west property line of said Block 3 on a bearing of North 00 15'34" West a distance of 1,225.64 feet to the northwest property corner of Lot 30 of said Block 3; thence easterly along the north property lines of said Blocks 3, 2, and 1 on a bearing of North 89 49'04" East a distance of 785.00 feet to the True Point of Beginning.

2. The property may not be sold for less than the fair market value, based upon two independent appraisals.
3. The state shall reserve all mineral rights in and under the premises conveyed as are now held by the state.
4. The conveyance authorized by this section is not subject to section 54-01-05.5.
5. The attorney general shall review and approve as to form and legality all legal documents required for the conveyance authorized by this section, including title opinions.

Approved April 3, 1995  
Filed April 3, 1995

## CHAPTER 162

### SENATE BILL NO. 2127

(Agriculture Committee)

(At the request of the Board of University and School Lands)

## SCHOOL LANDS LEASING AND RECREATIONAL USE

AN ACT to amend and reenact sections 15-01-02.1, 15-04-04, 15-04-10, 15-04-11, 15-04-13, 15-08-25, and subsections 2 and 4 of section 53-08-01 of the North Dakota Century Code, relating to surface leasing of state school lands and the definition of land for recreational use purposes; to repeal sections 15-04-03, 15-04-16, 15-04-17, and 15-06-20 of the North Dakota Century Code, relating to surface leasing of state school lands and the sale of coal lands; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-01-02.1. Board of university and school lands to set and establish fees - Collections.** The board of university and school lands shall have authority to set and establish fees in amounts equal to the cost of the issuance of patents, deeds, leases, assignments, land contracts, holding land sales, furnishing documents, receiving and processing all loans made by the board, managing property acquired under chapter 15-08.1, and managing property for other state entities. ~~All leasing fees for agricultural purposes must be collected by the county treasurer of the county wherein such land is leased at the time the first payment is made for leases, and such funds must be deposited in the general fund of the county.~~ All other fees provided for in this section must be deposited in the state lands maintenance fund.

**SECTION 2. AMENDMENT.** Section 15-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-04-04. Failure to summer-fallow cultivated lands cause for cancellation of lease.** If the lessee renting cultivated land fails or neglects to summer-fallow the land at the proper time, the board of university and school lands may declare the lease canceled and the amount paid as rent ~~as provided in section 15-04-03~~ must be forfeited.

**SECTION 3. AMENDMENT.** Section 15-04-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-04-10. Leasing to be by auction - Requirements governing.** The commissioner of university and school lands, or such other person appointed by the commissioner, shall conduct the leasing of the lands. The leasing must be at public auction, to the highest bidder, and must be held at the county seat. The auction must commence on the day and time specified in the advertisement for the leasing. Notice must be given when the land is offered for lease, that all bids are subject to approval by the board. ~~In counties where a large number of tracts of land are to be leased, the land situated in certain townships may be designated in the advertisement to be leased on certain specified days, and in that case the lands must be leased or offered for lease on the days specified. If all designated lands are not offered for~~

lease because of lack of time; the leasing of the lands unoffered may be adjourned until the following day or days when they must be the first lands offered for lease. Lands that have not been subdivided specially must be offered for lease in tracts of one quarter section each, except as provided in section 15-08-25. Lands specially subdivided may be offered for lease in the smallest subdivision thereof. At the time of offering the lands for lease, the county auditor of the county shall act as clerk. Within five days after the completion of the auction the county auditor shall certify to the board of university and school lands a list of the lands leased; the price for which each tract was leased; the name of each lessee; and the initial amount of money paid by each lessee for rent.

**SECTION 4. AMENDMENT.** Section 15-04-11 of the North Dakota Century Code is amended and reenacted as follows:

**15-04-11. Amount of bid deposited at time of leasing - Minimum bid.** The highest bidder for any parcel of land shall deposit the amount of his bid for one year's rental on the day of the sale with the county treasurer, who shall act as treasurer at the auction. No bid may be accepted which is less than the minimum price fixed pursuant to the provisions of section 15-04-07.

**SECTION 5. AMENDMENT.** Section 15-04-13 of the North Dakota Century Code is amended and reenacted as follows:

**15-04-13. Approval of leases by board - Execution of lease contracts.** Immediately upon the receipt of the reports of the county auditor as required by section 15-04-10, the The board of university and school lands shall approve and confirm such leases as in its judgment should be made and shall certify at once to the commissioner a list of the approved leases by December thirty-first. The commissioner, without delay, shall execute contracts of lease in the form prescribed by the board and shall forward same to the lessee. The commissioner shall certify forthwith, to the auditor of the proper county, a list of the leases that have been approved by the board.

**SECTION 6. AMENDMENT.** Section 15-08-25 of the North Dakota Century Code is amended and reenacted as follows:

**15-08-25. Lease or sale of public lands traversed or bisected by a highway, road, railroad, canal, river, or lake.** All boards, departments, and officials of government are authorized and permitted to lease or sell school and public lands traversed or bisected by a highway, road, or railroad, canal, river, or lake as two or more separate parcels, each of which may be leased or sold separately or together with an adjoining tract. Lands consisting of less than one hundred usable acres [40.47 hectares] may either be leased or sold separately or with tracts in the same section or adjacent section.

**SECTION 7. AMENDMENT.** Subsections 2 and 4 of section 53-08-01 of the North Dakota Century Code are amended and reenacted as follows:

2. "Land" includes all public and private land, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty.
4. "Recreational purposes" includes; but is not limited to; any one or any combination of the following: hunting; fishing; swimming; boating; camping; picnicking; hiking; pleasure driving; nature study; water skiing; winter sports; and visiting; viewing or enjoying historical; archaeological;

~~geological, scenic, or scientific sites, or otherwise using land for purposes of the user any activity engaged in for the purpose of exercise, relaxation, pleasure, or education.~~

**SECTION 8. REPEAL.** Sections 15-04-03, 15-04-16, 15-04-17, and 15-06-20 of the North Dakota Century Code are repealed.

**SECTION 9. EMERGENCY.** Section 7 of this Act is declared to be an emergency measure.

Approved March 17, 1995

Filed March 20, 1995

## CHAPTER 163

## SENATE BILL NO. 2124

(Education Committee)

(At the request of the Board of University and School Lands)

## BOARD OF UNIVERSITY AND SCHOOL LANDS FUNDS

AN ACT to amend and reenact sections 15-03-05.2, 15-03-16, 15-35-01.1, and 15-60-10 of the North Dakota Century Code, relating to the distribution of income earned by the permanent funds managed by the board of university and school lands, continuing appropriations for certain board of university and school lands investment fees, approval of school district construction projects, and issuance of school construction loans; and to repeal section 15-03-15 of the North Dakota Century Code, relating to the approval of farm loans and investments by the board of university and school lands.

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

SECTION 1. AMENDMENT. Section 15-03-05.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-03-05.2. Distribution of fund income.** The board shall distribute only that portion of ~~the fund~~ a fund's income that is consistent with the long-term goals of preserving the purchasing power of the ~~funds fund~~ fund and maintaining income stability to the fund ~~beneficiaries~~. The income that is retained must be added to the permanent funds and remain inviolate beneficiary. If the amount of income earned by a fund in a fiscal year is greater than the amount distributed to the fund beneficiary in the preceding fiscal year, the board shall:

1. Distribute to the fund beneficiary all or a portion of the income in excess of the previous fiscal year's distribution;
2. Retain for distribution in future years all or a portion of the income in excess of the preceding fiscal year's distribution in an amount not to exceed ten million dollars; or
3. Add to the permanent fund all or a portion of the income in excess of the preceding fiscal year's distribution.

No income may be retained ~~and for future distribution or~~ added to ~~the a~~ a permanent funds fund if it would result in a decrease in distributions to the ~~common schools or other fund beneficiaries~~ beneficiary from the amount distributed during the preceding fiscal year. Actual cash distributed during a fiscal year must be based on the estimated income of each fund. If the board's determination of the amount to be distributed for a fiscal year is different than the actual cash distributed, an adjustment must be made to ~~the~~ distributions during the following fiscal year. For the purpose of this section, any such adjustment must be considered part of the prior fiscal year's distribution.

SECTION 2. AMENDMENT. Section 15-03-16 of the North Dakota Century Code is amended and reenacted as follows:



**15-03-16. Appropriation for investments.** There is hereby appropriated annually the sum necessary for the investments of the board of university and school lands including accrued interest, and related investment management fees, trustee fees, consulting fees, and custodial fees for the funds under the control of the board. Each payment must be made from the fund for which the investment is made.

**SECTION 3. AMENDMENT.** Section 15-35-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-35-01.1. Approval required for certain school district construction projects.**

1. Notwithstanding the powers and duties of school boards of public school districts otherwise provided by law, all construction, purchase, repair, improvement, renovation, or modernization of any school building or facility within a school district estimated by the school boards to cost in excess of twenty-five thousand dollars may not be commenced unless approved by the superintendent of public instruction. No such construction, purchase, repair, improvement, renovation, or modernization of any school building or facility may be approved unless the school district proposing the project demonstrates the need ~~and~~, the educational utility of the project, fiscal need, and the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education. In the event of disagreement between the superintendent of public instruction and the school board applying for approval of a construction project under this section, the school board may appeal the application to the state board of public school education and the decision of the state board approving or disapproving the application is final.
2. ~~If a school district intends to apply for a loan from the board of university and school lands pursuant to chapter 15-60, the school district must demonstrate fiscal need and capacity to repay the loan under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the board of university and school lands.~~
3. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.

<sup>76</sup> **SECTION 4. AMENDMENT.** Section 15-60-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-60-10. Loans.**

1. The board may ~~make loans for purposes described in this chapter to school districts from~~ authorize the use of moneys deposited in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02:

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<sup>76</sup> Section 15-60-10 was also amended by section 1 of House Bill No. 1216, chapter 204.

The board shall consider an application for a loan in the order of its approval by the superintendent under subsection 2 of section 15-35-01.1 for the purpose of funding loans described in this chapter. The outstanding principal balance of loans made from the fund funded under this chapter may not exceed twenty-five million dollars. The board may adopt policies and rules for funding school construction loans.

2. An application for a loan A project must be approved by the superintendent pursuant to section 15-35-01.1 before the application may be submitted to the board a loan may be issued under this section. An application for a loan under this section must be submitted to the superintendent. The application must contain information deemed necessary by the superintendent, including a discussion of alternative sources or methods for financing the construction or improvement, and must be considered in the order of its approval under subsection 1 of section 15-35-01.1. If the superintendent approves the loan, the superintendent may also determine the loan amount and a percent of interest to be paid on the loan. In determining the amount of a loan, the superintendent shall take into account the cost of the project and the fiscal capacity of the school district. To be eligible for a loan, the school district must have an existing indebtedness equal to at least fifteen percent of the school district's taxable valuation. The interest on a loan may not exceed the rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the superintendent pursuant to section 15-35-01.1, provided the interest rate may not exceed six percent. The superintendent may adopt rules governing school construction loans.
3. Loan applications approved by the board superintendent must be forwarded to the Bank. The Bank shall assist the board by preparing and approving the loan documents, handling the loan closing, and servicing the loan manage and service all school construction loans issued under this chapter and shall execute all necessary loan instruments. The Bank may charge loan recipients a fee for managing and servicing the loan. The Bank shall receive payments of principal and interest from the school districts, and shall remit payments of principal and interest to the board for redeposit in the fund. The interest must be used and deposited in accordance with section 21 of article X of the Constitution of North Dakota, which must use or deposit the payments in accordance with section 57-62-02 and section 21 of article X of the Constitution of North Dakota.

**SECTION 5. REPEAL.** Section 15-03-15 of the North Dakota Century Code is repealed.

Approved March 6, 1995  
Filed March 6, 1995

**CHAPTER 164****SENATE BILL NO. 2126**

(Agriculture Committee)

(At the request of the Board of University and School Lands)

**MORTGAGOR REPURCHASE RIGHTS IN  
FORECLOSED LAND**

AN ACT to amend and reenact section 15-07-10 of the North Dakota Century Code, relating to the repurchase of nongrant lands by the original mortgagor following foreclosure.

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

**SECTION 1. AMENDMENT.** Section 15-07-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-07-10. Mortgagor has right to repurchase.** If any mortgagor or a member of the mortgagor's immediate family, including a father, mother, son, daughter, brother, sister, or spouse, desires to repurchase land lost through foreclosure or by a deed given in lieu of foreclosure, such repurchase may be made at a private sale any time before such lands are offered at public sale to the highest bidder by matching the highest bid within one hour after public sale. The terms and conditions of any sale under this section must be established by the board of university and school lands, consistent with this title and the fiduciary responsibilities of the board.

Approved March 1, 1995

Filed March 1, 1995

**CHAPTER 165****SENATE BILL NO. 2125**

(Agriculture Committee)

(At the request of the Board of University and School Lands)

**SCHOOL LAND VALUATION AND SALE**

AN ACT to amend and reenact section 15-09-04 of the North Dakota Century Code, relating to the valuation and sale of school lands for public purposes.

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

**SECTION 1. AMENDMENT.** Section 15-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-09-04. Board to fix price for lands described in application - Conveyance.** ~~If the~~ The board of university and school lands may sell the property described in the application to the applicant at a price not less than the appraised value if the board concludes at the hearing that the land described in the application is required for the purposes stated in such application; it shall fix a price, not less than the appraised valuation thereof, at which the conveyance of the entire tract of land will be made voluntarily and that a conveyance of the property is consistent with this title and the fiduciary responsibilities of the board. If the land described in the application is less than an entire tract, the board, in fixing the price at which such partial tract will be conveyed, shall take its value into consideration together with all detriment caused to the remaining portions of the tract by the conveyance of the partial tract. If the applicant agrees to the price fixed by the board for the land described in the application and pays the full purchase price therefor, the board shall cause the tract to be conveyed to the applicant.

Approved March 1, 1995

Filed March 1, 1995

## CHAPTER 166

## HOUSE BILL NO. 1433

(Representative Berg)

## HIGHER EDUCATION SYSTEM LONG-TERM PLAN

AN ACT to amend and reenact section 15-10-14.2 of the North Dakota Century Code, relating to the higher education system long-term plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>77</sup> SECTION 1. AMENDMENT. Section 15-10-14.2 of the North Dakota Century Code is amended and reenacted as follows:

15-10-14.2. Higher education system review - ~~Seven-year plan~~ Plan - Report to legislative assembly.

1. In ~~each odd-numbered year~~ October 1996, and every six years thereafter, the state board of higher education shall meet with the legislative council and the governor ~~or the governor's designee to solicit ideas and issues the council members and the governor believe are priority issues regarding the future of the system of higher education in~~ to review the status of the university system, and to establish the long-term goals and objectives that will best serve the citizens of this state.
2. During each year after the meetings required by subsection 1, the state board of higher education shall:
  - a. Prioritize the long-term goals;
  - b. Develop specific directions for the pursuit of the goals given priority;
  - c. Develop measurable criteria in order to determine the rate of progress toward achieving the goals given priority; and
  - d. Develop specific timelines within which the goals given priority must be attained.
3. In ~~each even-numbered year~~ October 1997, and every six years thereafter, the state board of higher education shall ~~present to meet with the legislative council and the governor a seven-year comprehensive plan for the system of higher education in this state. The plan must describe the current and desired condition of the system, in light of the needs of faculty, administrators, and students, and must specifically describe:~~

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<sup>77</sup> Section 15-10-14.2 was also amended by section 1 of Senate Bill No. 2535, chapter 167.

- a: The measures the board plans to take to ensure that the system of higher education meets the postsecondary education and training needs of the citizens and employers of the state.
  - b: The measures the board plans to take to improve the quality of higher education for students.
3. The seven-year plan must contain the rationale of the state board of higher education for the items it has listed in the plan as top priority and the methods the board intends to take to address these top priority issues during the next seven years. The plan must describe what the citizens of the state can expect as a result of the board's actions; the cost or savings of those actions; and specific, detailed options for meeting any costs.
4. The state board of higher education shall report on the seven-year plan, including a report on how the funds proposed in the budget for the upcoming biennium will be used to implement the plan; to the legislative assembly at the organizational session and shall present the directions, criteria, and timelines the board developed in accordance with subsection 2.
4. The state board of higher education shall also present to the legislative council and the governor options for generating within the university system the revenues needed to ensure attainment of the goals given priority.
5. The state board of higher education shall meet with the legislative council and the governor at least once during each intervening year and shall present a progress report regarding its goals and objectives, together with any other information requested by the legislative council or the governor.

Approved March 10, 1995

Filed March 13, 1995

## CHAPTER 167

### SENATE BILL NO. 2535

(Senators Nalewaja, Grindberg, Kinnoin)  
(Representatives Christenson, Poolman, Rydell)

## HIGHER EDUCATION SEVEN-YEAR PLAN CONTENTS

AN ACT to amend and reenact section 15-10-14.2 of the North Dakota Century Code, relating to the higher education seven-year plan.

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

<sup>78</sup> SECTION 1. AMENDMENT. Section 15-10-14.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-14.2. Higher education system review - Seven-year plan - Report to legislative assembly.**

1. In each odd-numbered year, the state board of higher education shall meet with the legislative council and the governor or the governor's designee to solicit ideas and issues the council members and the governor believe are priority issues regarding the future of the system of higher education in this state.
2. In each even-numbered year, the state board of higher education shall present to the legislative council and the governor a seven-year comprehensive plan for the system of higher education in this state. The plan must describe the current and desired condition of the system, in light of the needs of faculty, administrators, and students, and must specifically describe:
  - a. The measures the board plans to take to ensure that the system of higher education meets the postsecondary education and training needs of the citizens and employers of the state.
  - b. The measures the board plans to take to improve the quality of higher education for students, including defining and meeting student and institutional expectations regarding teaching and learning, the curriculum, the quality of campus life, and educational services.
3. The seven-year plan must contain the rationale of the state board of higher education for the items it has listed in the plan as top priority and the methods the board intends to take to address these top priority issues during the next seven years. The plan must describe what the citizens of the state can expect as a result of the board's actions, the cost or savings of those actions, and specific, detailed options for meeting any costs.

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<sup>78</sup> Section 15-10-14.2 was also amended by section 1 of House Bill No. 1433, chapter 166.

4. The state board of higher education shall report on the seven-year plan, including a report on how the funds proposed in the budget for the upcoming biennium will be used to implement the plan, to the legislative assembly at the organizational session.

Approved March 28, 1995

Filed March 29, 1995



## CHAPTER 168

### HOUSE BILL NO. 1277 (Representatives Boehm, Kempenich)

#### HIGHER EDUCATION ADMISSION CRITERIA

AN ACT to amend and reenact subsection 4 of section 15-10-17 of the North Dakota Century Code, relating to admission criteria prescribed by the board of higher education.

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

<sup>79</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 15-10-17 of the North Dakota Century Code is amended and reenacted as follows:

4. To determine the moral and educational qualifications of applicants for admission to the various courses of instruction ~~and, to prescribe rules, regulations, and bylaws~~ by rule criteria for the admission of students, ~~but no~~ and to ensure that the criteria for admission are applied to all applicants in a uniform and nondiscriminatory manner, regardless of the school or educational setting from which an applicant obtained a high school diploma or its equivalent. No instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of such institutions, and no sectarian or partisan test shall ever be allowed or exercised in the election of professors, teachers, or other officers of the institutions, or in the admission of students, or for any purpose whatsoever.

Approved March 21, 1995  
Filed March 21, 1995

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<sup>79</sup> Section 15-10-17 was also amended by section 2 of House Bill No. 1058, chapter 243.

## CHAPTER 169

## HOUSE BILL NO. 1087

(Education Committee)

(At the request of the State Board of Higher Education)

**RESIDENT STUDENT FOR HIGHER EDUCATION  
DEFINED**

AN ACT to amend and reenact subsection 2 of section 15-10-19.1 of the North Dakota Century Code, relating to the definition of resident student for higher education tuition purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-10-19.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A "resident student" for tuition purposes means:

- a. A person less than eighteen years of age whose guardian, custodial parent, or parents ~~reside in~~ are legal residents of this state and have resided in this state for twelve months, or a dependent child whose custodial parent moved into the state with the intent to establish legal residency for a period of years within the last twelve months immediately prior to the date of registration beginning of the academic term;
- b. A person of age eighteen or over who ~~resides in~~ is a legal resident of this state and has resided in this state after reaching age eighteen for twelve months immediately prior to the date of registration; ~~provided the person is not a dependent of a parent who is not a resident of this state~~ beginning of the academic term;
- c. A person who graduated from a North Dakota high school within ~~sixty-four months of registration~~ six years of the beginning of the academic term;
- d. A full-time active duty member of the armed forces assigned to a military installation in this state;
- e. A spouse or dependent of a full-time active duty member of the armed forces assigned to a military installation in this state, a dependent of an instructor who lives and teaches in any institution of higher education in this state, and a spouse of any other resident for tuition purposes; and
- f. Any other person who ~~registers within sixty months after residing in this state for a period of at least thirty-six consecutive months~~ was a legal resident of this state for at least three consecutive years within six years of the beginning of the academic term.

Approved March 6, 1995

Filed March 6, 1995

**CHAPTER 170****HOUSE BILL NO. 1322**

(Representatives Bernstein, Dalrymple, Kaldor)  
(Senators Nalewaja, Mathern)

**NDSU EIGHTEENTH STREET DEVELOPMENT FUND**

AN ACT to create and enact a new section to chapter 15-12 of the North Dakota Century Code, relating to creation of a special fund to develop eighteenth street on the campus of North Dakota state university.

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

**SECTION 1.** A new section to chapter 15-12 of the North Dakota Century Code is created and enacted as follows:

**Eighteenth street development fund.** A special fund is established in the state treasury to be known as the eighteenth street development fund. Net income received by North Dakota state university from leases of real property for the development and commercialization of the nineteenth avenue project, located in the north one-half of the northwest quarter of section thirty-one, township one hundred forty north, range forty-eight west, county of Cass, state of North Dakota, and consisting of approximately three hundred feet in width and one thousand thirty-two feet in length and bordered by nineteenth avenue north, university drive, and north tenth street in the city of Fargo, must be deposited into the fund. "Net income" means lease rental payments less expenses for improving, maintaining, and developing the nineteenth avenue project. The fund and interest earned on the fund must be used for the payment of expenses and special assessments associated with the construction and improvement of eighteenth street on the campus of North Dakota state university located in section thirty-six, township one hundred forty north, range forty-nine west, county of Cass, state of North Dakota. The fund is not subject to the provisions of section 54-44.1-11.

Approved March 31, 1995  
Filed April 3, 1995

**CHAPTER 171****SENATE BILL NO. 2144**

(Education Committee)

(At the request of the State Board of Public School Education)

**DIVISION OF INDEPENDENT STUDY NONRESIDENT SERVICES**

AN ACT to amend and reenact section 15-19-01 of the North Dakota Century Code, relating to services provided to nonresidents by the division of independent study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-19-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-01. Correspondence courses - Establishment - Enrollment of pupils - Courses of instruction.** The state shall provide correspondence courses through the division of independent study under the following provisions:

1. A complete curriculum by correspondence which has been specifically determined by the state board of public school education as proper and suitable for instruction under correspondence methods, such determination and approval to be made not less than once in each school year, must be maintained upon the campus of one of the state institutions of higher education by the state board of public school education.
2. Unless specifically excused in writing upon the course application forms by the superintendent or an administrator of the school approving the enrollment application, or as provided in subsection ~~5 of this section~~ **6** all pupils under the age of sixteen taking advantage of the provisions of this chapter must be required to attend their local district schools and to study their correspondence lessons under the supervision of a local supervisor. If not required to attend their local schools, their work may be done at a place designated by the state director in accordance with the rules of the state board of public school education. If in attendance at a local school pupils must be supplied with desk space in their respective school without charge, and they shall attend school regularly, and be under the same disciplinary supervision of the teachers as the other school pupils.
3. The division of independent study may provide services to persons who are not North Dakota residents.
4. The correspondence work must be completed in accordance with the rules established by the state board of public school education.
- 4→ 5. Correspondence pupils shall pay for books and materials used by them, postage required to mail reports to the division, and other fees as may be prescribed by the board of public school education.

- ~~§~~ 6. Pupils exempt from the compulsory school attendance laws pursuant to subsection 5 of section 15-34.1-03 may enroll in correspondence courses offered through the division of independent study. These students may study their correspondence lessons in their learning environment under the supervision of a parent. The tests for the correspondence study must be administered by a certified teacher employed either by the public school district in which the parent resides or a state-approved private or parochial school.

Approved March 6, 1995

Filed March 6, 1995

**CHAPTER 172****HOUSE BILL NO. 1270**

(Representatives Grosz, Freier, Sveen)  
(Senators Andrist, G. Nelson, B. Stenehjem)

**STUDENT PERFORMANCE STANDARDS AND  
PARTICIPATORY DECISIONMAKING REPEAL**

AN ACT to repeal sections 15-21-04.6 and 15-29-08.3 of the North Dakota Century Code, relating to student performance standards and assessments and school district policies and plans for participatory school decisionmaking.

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

**SECTION 1. REPEAL.** Sections 15-21-04.6 and 15-29-08.3 of the North Dakota Century Code are repealed.

Approved March 10, 1995  
Filed March 13, 1995

## CHAPTER 173

## SENATE BILL NO. 2159

(Education Committee)

(At the request of the Superintendent of Public Instruction)

## SCHOOL AGE AND PLACEMENT

AN ACT to amend and reenact sections 15-21-13.1, 15-34.2-03, 15-40.1-01, 15-40.2-01, 15-40.2-05, 15-40.2-08, 15-47-01, and 57-15-14.5 of the North Dakota Century Code, relating to uniform accounting and reporting, family transportation, definition of a high school student, tuition agreements in districts that do not provide grade levels of service, meetings of county committees regarding tuition hearings, students placed for reasons other than education, school age, and long-distance learning levies.

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

**SECTION 1. AMENDMENT.** Section 15-21-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-13.1. Uniform accounting and reporting system.** The superintendent of public instruction shall implement a uniform ~~computerized~~ system for the accounting, budgeting, and reporting of fiscal data for all school districts in the state. The superintendent of public instruction shall ~~select one type of computer hardware, which must be compatible with personal computer systems; and no more than two recommend accounting~~ software programs to be used by school districts.

**SECTION 2. AMENDMENT.** Section 15-34.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-34.2-03. Transportation - Payment optional with school board.** The school board of any school district in the state may pay to each family living more than two miles [3.22 kilometers] from a school in the district which is taught the required length of time, a reasonable sum per day for each day's attendance of a student or students of such family, when transported by ~~a~~ an adult member of the family or by a conveyance furnished or paid for by the family, or when the family has paid for lodging for the child, according to the distance between the home of the family and the school. Such distance must be measured by the route from the front door of the school attended to the front door of the family's residence according to the most convenient public course of travel.

**SECTION 3. AMENDMENT.** Section 15-40.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-01. High school student defined.** As used in this chapter and in the provisions relating to payments from the state, the term "high school student" includes only students who:

1. Have completed all of the work of the first eight grades, but have not completed the work of the twelfth grade.
2. Are residents of this state or who are attending a North Dakota school under a foreign student exchange program.

<sup>80</sup> **SECTION 4. AMENDMENT.** Section 15-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-01. Transfer of pupils to other districts or institutions - Tuition agreements - Student discretion upon cessation of educational services.**

1. The school board of any district may send kindergarten, elementary, or high school pupils into another school district or to an accredited institution of another state when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of such pupils to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to such other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from such other schools or institutions.
2. ~~When~~ If a school district ~~ceases to~~ does not provide educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice, outside their district of residence without going through the procedures outlined in section 15-40.2-05. The school district of residence shall ~~either pay tuition or seek a tuition waiver from~~ to the admitting school district. A student may exercise the provisions of this subsection whether the school district of residence ceased to provide the required grade level before or after the effective date of this Act.

<sup>81</sup> **SECTION 5. AMENDMENT.** Section 15-40.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-05. Application of parent or guardian for payment of tuition by district.** The parent or guardian of any pupil who is a resident of a district may apply in writing to the school board of the school district of residence of the pupil for approval of the payment of tuition charges to another school district for attendance of the pupil in such other school district. The school board shall, within sixty days of its receipt of such application, meet with the parent or guardian of the pupil concerned and render a decision in regard to payment of tuition charges. If the school board has not rendered a decision within sixty days of receipt of the application, the application must be deemed approved. If the school board of the district of residence approves such application, it shall pay the tuition charges. In the event such application is disapproved, the parent or guardian of the pupil may file an appeal with the county superintendent of schools, and a three-member committee consisting of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools shall within fifteen days consult with the school boards of the districts concerned and

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<sup>80</sup> Section 15-40.2-01 was also amended by section 15 of Senate Bill No. 2209, chapter 177.

<sup>81</sup> Section 15-40.2-05 was also amended by section 2 of House Bill No. 1044, chapter 196.



with the parent or guardian of the pupil concerned, hold a hearing, giving advance notice to the parties directly involved, and render a decision in regard to payment of the tuition charges. The hearing must be conducted in a manner that allows the arguments and responses of all parties to be presented. In making its decision, the committee shall determine whether the pupil is a high school pupil, which, for purposes of this section, must be defined to mean grades nine through twelve, or whether the pupil is an elementary school pupil, which, for purposes of this section, must be defined to mean grades one through eight, or whether the pupil is a kindergarten pupil, which, for purposes of this section, must be defined as a program established pursuant to chapter 15-45, and then proceed in accordance with the following:

1. High school. If the pupil is a high school pupil and the committee finds that the attendance of such pupil is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the particular pupil, or in cases of extreme family or pupil hardship, the committee may approve or disapprove the application. Upon approval, the committee shall approve the payment of tuition by the district of residence of the pupil, obligating such district of residence to pay the same. The committee's approval for the payment of tuition may be for any fixed number of school terms, up to the completion of the pupil's high school education. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.
2. Elementary. If the pupil is an elementary pupil and the committee finds that the attendance of such pupil is necessitated by shorter distances or in cases of extreme family or pupil hardship, the committee may approve or disapprove the application. Upon approval, the committee shall approve the payment of tuition by the district of residence of the pupil, obligating such district of residence to pay the same. The committee's approval for the payment of tuition is limited to one school term, and subsequent applications for the payment of tuition may be made annually. The decision of the committee is final.
3. Kindergarten. If the pupil is a kindergarten pupil, the school board of the district of the pupil's residence may pay tuition to the receiving district. The committee may not hear an appeal from the parents or guardian as provided for in this section if the school board of the district of residence decides not to pay tuition to the admitting district. If the school board of the district of residence does not pay the tuition to the admitting district, the parent or guardian of the pupil may pay the tuition to the admitting district under the provisions of section 15-40.2-02.

If ~~any portion~~ twenty-five percent or more of the taxable valuation of the school district ~~of residence~~ lies in more than one another county, the joint committee shall consist of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools from ~~each the county lying within the district in which the school district headquarters is located, and any counties in which twenty-five percent or more of the taxable valuation is located,~~ and the concurrence of a majority of the quorum of the joint committee must render a decision regarding payment of the tuition. In the event that the district of residence of the pupil does not comply with the decision requiring that the tuition charges be paid, the admitting district shall notify the county superintendent of schools of the county of the pupil's residence and the state

superintendent of public instruction of such fact, and upon verification by the county superintendent of schools that such tuition payments are in fact due the admitting district and are unpaid, all payments from the state for foundation aid to the district of residence of the pupil, must be withheld until the tuition due has been fully paid.

This section may not be construed to require the district of residence to provide pupil transportation or payments in lieu thereof, for pupils for whom the payment of tuition has been approved.

<sup>82</sup> **SECTION 6. AMENDMENT.** Section 15-40.2-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-08. Residency determination and the payment of tuition in cases of child placements for purposes other than education.**

1. For purposes of applying this chapter, the school district in which a child resides must be construed to be the district of residence of such child:
  - a. At the time an order of a state court, tribal court, or juvenile supervisor requires such child to stay for any prescribed period at a state-licensed foster home, or state-licensed child care home or facility;
  - b. At the time of any placement for any prescribed period of time by a county or state social service agency with the consent of the parent or guardian at a state-licensed foster home, or state-licensed child care home or facility;
  - c. At the time of a placement to or from a state-operated institution; or
  - d. At the time of any voluntary admission to a state-licensed child care home or facility or state-operated institution.
2. The district of residence shall be liable for:
  - a. Tuition upon claim of the admitting district.
  - b. Tutoring services upon claim of the admitting facility, provided that the tutoring services are delivered by a certified and qualified teacher according to rules established by the superintendent of public instruction.
3. Where the guardian, parent, or parents of the child were residents of the district at the time of placement under subdivisions a through d of subsection 1, but such guardian, parent, or both parents have subsequently moved to another school district within North Dakota, then the tuition due the admitting district must be paid by the district of residence of the guardian, parent, or parents. If the guardian, parent, or parents have moved to another state, or if parental rights have been

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<sup>82</sup> Section 15-40.2-08 was also amended by section 3 of Senate Bill No. 2063, chapter 194.

terminated, then the tuition due the admitting district must be paid by the state from funds appropriated by the legislative assembly for the foundation aid program.

4. In the event of a voluntary admission to any state-licensed child care home or facility or state-operated institution, the determination of tuition may be subject to an appeal filed with the county superintendent of schools. Within fifteen days, the three-member committee referred to in section 15-40.2-05 shall consult with the school boards of the districts concerned and with the parent or guardian of the pupil concerned and render a decision in regard to the tuition charges.
5. If the district of residence does not pay the required tuition, the admitting district or facility shall notify the superintendent of public instruction, and upon verification that such tuition payments are in fact due and are unpaid, an amount equal to the unpaid tuition must be withheld from payments for foundation aid to the district of residence of the pupil until the tuition due has been fully paid.
6. An amount equal to the state average per-pupil elementary or high school costs, depending on the educational level of the student, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per-pupil cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state from funds appropriated for special education in the case of a student with disabilities, or from funds appropriated for foundation aid in all other cases.
7. If a student with disabilities, who is placed in accordance with the provisions of this section, reaches the age of majority and continues to receive special education and related services, the district of residence remains the same as that of the student's guardian, parent, or parents until the special education services are concluded.
8.
  - a. The placement agency shall provide written notice by registered mail of a placement made under court order or in an emergency to the superintendent of the district of residence and the superintendent of the admitting district within five working days after the placement.
  - b. Except as provided in subdivision a, the placement agency shall provide written notice by registered mail of a placement to the superintendent of the district of residence and the superintendent of the admitting district at least ten working days before the placement.
  - c. The placement agency shall afford the district of residence reasonable opportunity to participate in permanency planning for the child.

**SECTION 7. AMENDMENT.** Section 15-47-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-01. Schools free and accessible - School ages.** The public schools of the state must be equally free, open, and accessible at all times to all children

between who have reached the ages age of six by midnight August thirty-first for school districts that do not provide kindergarten or the age of five for school districts that provide kindergarten, and have not reached the age of twenty-one, except that children by midnight August thirty-first. Children who do not arrive at reach the age of six years by between midnight August thirty-first and midnight December thirty-first may not start the first grade in an elementary school until the beginning of the following year, except children who by reason of if they have special talents or abilities as determined by a series of developmental and readiness screening instruments approved by the state department of public instruction and administered by the school district, or who if they have completed kindergarten in an approved kindergarten, may start school at a younger age. However, under no circumstances may a child start first grade that school year if he is not six years of age by January first. Children who do not arrive at the age of five years by between midnight August thirty-first and midnight December thirty-first may not start kindergarten until the beginning of the following school year, except children who by reason of if they have special talents or abilities as determined by a series of developmental and readiness screening instruments approved by the state department of public instruction and administered by the school district may start school at a younger age. However, under no circumstances may a child start kindergarten that school year if he or she is not five years of age by January first.

**SECTION 8. AMENDMENT.** Section 57-15-14.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14.5. Long-distance learning and educational technology levy - Voter approval.**

1. The school board of a public school district may, upon approval by a majority vote of the electors of the school district at any regular or special election, dedicate a tax levy for purposes of this section not to exceed five mills on the dollar of taxable valuation of property within the district.
2. All revenue accruing from the levy under this section must be used only for purposes of establishing and maintaining long-distance learning and purchasing and maintaining educational technology. For purposes of this section, educational technology includes computer software, computers and computer networks, and other computerized equipment, which must be used for student instruction.
3. If the need for the fund terminates, the governing board of the public school district shall order the termination of the levy and shall transfer the remaining balance to the general fund of the school district.

Approved April 12, 1995

Filed April 13, 1995

**CHAPTER 174****HOUSE BILL NO. 1046**

(Legislative Council)

(Interim Education Services Committee)

(Representatives Gulleson, Kroeber, Gorder, Aarsvold)

(Senators Scherber, St. Aubyn)

**SCHOOL STAFF DEVELOPMENT MEETINGS**

AN ACT to amend and reenact section 15-21-18 of the North Dakota Century Code, relating to joint meetings and cooperative activities of the boards of higher education, vocational and technical education, and public school education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-21-18 of the North Dakota Century Code is amended and reenacted as follows:

15-21-18. Joint meetings of board of higher education, state board for vocational and technical education, and state board of public school education. The state board of higher education, and the members of the state board for vocational and technical education in their capacity as both the state board for vocational and technical education and the state board of public school education, shall hold at least one joint meeting each year at the joint call of the director for vocational and technical education, the superintendent of public instruction, and the commissioner of higher education for the purpose of coordinating their programs; cooperating in professional growth and development opportunities for kindergarten through grade twelve staff; and cooperating in any other manner that accomplishes the objectives of the three boards involved.

Approved March 14, 1995

Filed March 14, 1995

**CHAPTER 175****SENATE BILL NO. 2210**

(Political Subdivisions Committee)

(At the request of the Superintendent of Public Instruction)

**LEASES BY SUPERINTENDENT OF PUBLIC  
INSTRUCTION**

AN ACT to create and enact a new section to chapter 15-21 of the North Dakota Century Code, relating to leasing of real property by the superintendent of public instruction; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 15-21 of the North Dakota Century Code is created and enacted as follows:

**Superintendent may lease unused portions of real property.**

1. The superintendent of public instruction may lease surplus portions of real property, including buildings and improvements, owned by the state and administered under the direction of the superintendent of public instruction at the school for the blind, school for the deaf, and division of independent study.
2. Revenues from leases entered into under this section must be deposited and expended in accordance with approved agency budgets. Any lease of unused portions of buildings may be made only after consultation with and adherence to conditions recommended by the administrator of the state fire and tornado fund.
3. The term of a lease granted under this section may not exceed five years, but any lease must provide that it is cancelable by the state without liability at the end of any state fiscal biennium, or that the lease is renewable at the sole discretion of the superintendent of public instruction at the beginning of each fiscal biennium. Other terms and conditions may be prescribed by the superintendent for leases made under this section, including conditions for renewing leases. The attorney general shall approve the adequacy of the legal form of leases under this section before their execution.

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

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 176****HOUSE BILL NO. 1041**

(Legislative Council)  
(Interim Education Finance Committee)  
(Senator C. Nelson)

**COUNTY SUPERINTENDENT OF SCHOOLS DUTY  
ASSIGNMENT**

**AN ACT** to create and enact a new section to chapter 15-22 of the North Dakota Century Code, relating to the duties of county superintendents of schools; and to repeal sections 15-21-10, 15-22-10, 15-22-11, 15-22-13, 15-22-15, 15-22-16, 15-22-20, 15-22-26, 15-35-10, 15-38-02, 15-38-03, 15-38-14, 15-40.1-19, 15-47-17, 15-47-23, and 65-04-07 of the North Dakota Century Code, relating to the duties of county superintendent of schools, filing requirements, contingency funds, disaster drills, teacher registers, and reporting requirements.

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

**SECTION 1.** A new section to chapter 15-22 of the North Dakota Century Code is created and enacted as follows:

**County superintendents of schools - Assignment of duties.** Notwithstanding any other provision of law, a board of county commissioners may by majority vote choose not to employ a county superintendent of schools and may assign, to one or more qualified persons, all statutory duties of county superintendents of schools. The assignment of duties must be set forth in a written plan, and the plan must be approved by a majority of the presidents of school boards whose districts include land in the county and must be placed on file with the legislative council.

**SECTION 2. REPEAL.** Sections 15-21-10, 15-22-10, 15-22-11, 15-22-13, 15-22-15, 15-22-16, 15-22-20, 15-22-26, 15-35-10, 15-38-02, 15-38-03, 15-38-14, 15-40.1-19, 15-47-17, 15-47-23, and 65-04-07 of the North Dakota Century Code are repealed.

Approved April 7, 1995  
Filed April 7, 1995

## CHAPTER 177

## SENATE BILL NO. 2209

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT ANNEXATION AND  
REORGANIZATION

AN ACT to create and enact a new section to chapter 15-27.1, section 15-27.4-02.1, and a new section to chapter 15-40.3 of the North Dakota Century Code, relating to school district levies after annexation or dissolution, unobligated cash balance in a dissolution, and open enrollment exemptions; and to amend and reenact section 15-27.1-11, subsection 2 of section 15-27.2-01, sections 15-27.2-04, 15-27.3-01.1, 15-27.3-02, 15-27.3-05, 15-27.3-06, 15-27.3-14, 15-27.4-01, subsection 3 of section 15-27.4-02, sections 15-27.4-03, 15-40.1-07.3, subsection 2 of section 15-40.2-01, and subsection 1 of section 15-40.2-04, relating to school district annexation, reorganization, and dissolution and payment of tuition and open enrollment.

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

**SECTION 1. AMENDMENT.** Section 15-27.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.1-11. Reorganization; ~~annexation~~, or dissolution of school district not operating a school - Transportation.** Any school district that, for a period of one year, does not operate either an elementary or high school, must become by the end of that year, through the process of reorganization; ~~annexation~~, or dissolution, part of a school district operating an approved elementary or high school. Any student who resides within a school district which is ~~annexed to or~~ reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01, whose school district has been sending the students to a school district in a bordering state, county, or district, because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state, county, or district, subject to the provisions of section 15-40.2-09. The students residing within a school district that is ~~annexed to or~~ reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

The county committee of the county encompassing the major portion of any school district affected by this section, which school district does not reorganize ~~or annex itself to~~ with an operating school district within the time limit prescribed in this section, shall dissolve and attach the nonoperating school district to an operating school district in accordance with chapter 15-27.4.

This section does not apply to school districts established pursuant to chapter 15-27.5.

**SECTION 2.** A new section to chapter 15-27.1 of the North Dakota Century Code is created and enacted as follows:



Payment of school district levies after annexation or dissolution. When an annexation of territory under chapter 15-27.2 or an attachment of territory by dissolution under chapter 15-27.4 has been approved by the state board:

1. The territory annexed or attached to the receiving school district is subject to all of the receiving school district's levies, except those to retire bonded debt existing before the annexation or attachment, unless determined otherwise in the state board's findings made when the board approved the annexation or dissolution; and
2. The territory annexed to the receiving school district is not subject to any of the levies of the school district detached from, except those to retire bonded debt existing before the annexation, unless determined otherwise in the state board's findings made when the board approved the annexation.

<sup>83</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 15-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The annexation petition must:
  - a. Be obtained from the county superintendent;
  - b. Identify all of the ~~land area~~ territory to be annexed before it is circulated. The territory must constitute one land area, with no territory identified in the petition separate from other territory identified in the petition;
  - c. Be signed in the presence of the carrier of the petition; and
  - d. Be submitted to the county superintendent of the county in which the majority of land identified in the petition is located.

**SECTION 4. AMENDMENT.** Section 15-27.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.2-04. Annexation hearings - Equalization - Notice of hearings.**

1. Before detaching territory from one school district or annexing territory to another school district, the county committee shall hold a hearing on the annexation.
2. At least fourteen days prior to the time the hearing is to be held, the committee shall cause notice of such hearing to be published in the official newspaper of the county in which the school district is located, or if no newspaper is published in the county, the notice shall be published in a newspaper in an adjoining county in this state.
3. At such hearing the committee shall consider testimony and documentary evidence with respect to any of the following factors:

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<sup>83</sup> Section 15-27.2-01 was also amended by section 1 of House Bill No. 1042, chapter 178.

- a. The value and amount of all school property and all bonded and other indebtedness of each school district affected by a change in boundaries.
  - b. The amount of all outstanding indebtedness of each district and that which would constitute an equitable adjustment of all property, assets, debts, and liabilities among the districts involved.
  - c. The taxable valuation of existing districts and the differences in such valuation which would accrue under the proposed annexation.
  - d. The size, geographical features, and boundaries of the districts.
  - e. The number of pupils attending school and the population of the districts.
  - f. The location and condition of the districts' school buildings and their accessibility to affected pupils.
  - g. The location and condition of roads, highways, and natural barriers within the respective districts.
  - h. The school centers where children residing in the districts attend high school.
  - i. Conditions affecting the welfare of the pupils in the land area that is the subject of the annexation petition.
  - j. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts.
  - k. The educational needs of local communities in the involved districts.
  - l. An objective in economizing in the use of transportation and administrative services.
  - m. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts.
  - n. A reduction in disparities in ~~per-pupil~~ per student valuation between school districts and the objective of equalization of educational opportunities for pupils.
  - o. Any other relevant factors which, in the judgment of the committee, are of importance.
4. Following the committee's consideration of testimony and documentary evidence with respect to any of the factors listed in subsection 3, the committee shall make specific findings with reference to every one of those factors to which testimony or documentary evidence was directed.
  5. All proposed annexations must be given final approval by the state board following a hearing conducted by the board at which testimony and documentary evidence shall be considered with respect to any of the factors listed in subsection 3. The state board shall make specific

findings with reference to every one of those factors to which testimony or documentary evidence was directed.

6. a. If the annexation is approved by the state board, the county committee may cause a tax to be levied against each district affected in accordance with section 15-47-21 which will equalize the several interests fairly. The unobligated cash balance in excess of ten thousand dollars not designated for indebtedness is a credit for those who own property within the annexed school district against taxes levied by the receiving school district in the year or years following the annexation based on the previous five-year average of the total mills levied for education by the district being annexed, as calculated by the county auditor. If a school district is attached to more than one school district, the credit that those who own property within the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to annexation.

b. Any political subdivision required to provide a tax credit under subdivision a; as a result of an annexation occurring after January 1, 1989, may upon approval of the county commissioners, provide a cash refund in lieu of the tax credit. The school district holding the unobligated cash balance shall, at the request of the county auditor, pay to the county treasurer the amount to be paid to those who own property within the annexed district. The treasurer shall issue the refund to the owner of the property, as shown on the county's assessment list at the time of payment. If there is a lien for unpaid taxes against any property, the treasurer shall first apply the tax credit toward any outstanding balance. Any amount remaining may then be paid to the property owner. The cash refunds must be calculated proportionately to the total taxable value of the annexed district during the last year taxes were levied.

7. If the school districts involved in the proposed annexation are situated in more than one county, the county committee of the county encompassing the major portion of each school district shall consider and jointly effect the annexation if a majority of the members of each of such county committees approves the annexation. If the annexation is approved by a majority of the members of one of the two county committees, the county superintendent of the county in which the annexing district is located shall submit the annexation to the state board for approval or disapproval, and in such instance approval of the annexation shall have the same effect as approval by all county committees.

8. 7. Whenever a petition for annexation has failed to be approved by any county committee, a petition involving any of the same area may not be submitted to the county committee for a period of three months after the filing of the original petition with the county. The petition may not be submitted to considered by the county committee more than twice in twelve consecutive months.

9. 8. Whenever a petition for annexation has failed to be approved by the state board, a petition involving any of the same area may not be

submitted to the ~~state board~~ county committee for a period of three months after the ~~filing of the petition~~ state board's determination not to approve the annexation. The petition may not be ~~submitted to~~ considered by the state board more than twice in twelve consecutive months.

- ~~10- 9.~~ If the school districts are situated in more than one county but the major portions of both such school districts are situated in the same county, the county committee of such county shall consider the matter.
- ~~11- 10.~~ Any determination made by a single county committee with respect to an annexation proposed under this section may be appealed to the state board. A decision of the state board with respect to a proposed annexation may in turn be appealed to the district court of the judicial district in which the territory proposed is located in accordance with chapter 28-32.

**SECTION 5. AMENDMENT.** Section 15-27.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-01.1. School district reorganization - How to initiate.** School districts or parts of school districts may reorganize under this chapter. A school district may become involved in a reorganization proposal by a majority vote of its school board members. A reorganization proposal must be prepared by the school districts that have voted to become involved in the reorganization proposal.

**SECTION 6. AMENDMENT.** Section 15-27.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-02. Proposal involving territory in more than one submitted to county committees.** ~~If the school districts involved in a reorganization proposal are situated in more than one county, a special committee composed of not fewer than three members of each of the county committees of the counties encompassing the major portion of each school district shall prepare a proposal for the reorganization of the school districts. The reorganization proposal must be submitted to each the county committee committees of the counties encompassing the major portion of each involved school district for its approval. If the reorganization proposal is approved by a majority of the members of at least one of the two county committees, or the members of one or more of the special committees fail or refuse to meet with the committee or committees from other counties committee, the county superintendent of the county in which the largest number of pupils who would be affected by the proposed new district reside shall submit the reorganization proposal to the state board for approval or disapproval. Approval of the reorganization proposal by the state board has the same effect as approval by all the county committees. If the reorganization proposal fails to receive the approval of any county committee, it may not be presented to the state board for review. If the school districts are situated in more than one county but the major portions of both such school districts are situated in the same county, the county committee of that county shall consider the matter.~~

**SECTION 7. AMENDMENT.** Section 15-27.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-05. Public hearing on proposals for reorganization - Hearing testimony for adjusting.** The county committee shall hold a public hearing on the advisability of any reorganization proposal. Notice of hearings must be given by

publishing a notice in the official county newspaper at least fourteen days prior to the date of each hearing. If the county committee fails to call a hearing or to give the required public notice, a petition signed by twenty-five percent of the qualified electors in the area proposed to be included in the new school district and presented to the committee makes it mandatory for a hearing to be called. Notice of the hearing must be published within ten days after the petition has been filed, and must set forth the date selected for the hearing, which may not be more than twenty days after the date of publication. The county committee shall also hear at such time as may be fixed by it, testimony offered by any person or school district interested in the reorganization proposal. The testimony and documentary evidence considered by the county committee must include any information regarding the following factors:

1. The value and amount of all school property of whatever nature involved in the proposed action.
2. The nature, amount, and value of all bonded, warrant, and other indebtedness of each school district affected by the proposed action, including all unexecuted obligations with separate consideration given to the amount of outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements, and the location of such improvements in order that an equitable adjustment of all property, debts, and liabilities among the districts involved be made.
3. The taxable valuation of the existing districts and the differences in such valuation which would accrue under a proposed reorganization.
4. The size, geographical features, and boundaries of the districts.
5. The number of pupils attending school and the population of the districts.
6. The location and condition of the districts' school buildings and their accessibility to affected pupils.
7. The location and condition of roads, highways, and natural barriers within the respective districts.
8. The school centers where children residing in the districts attend high school.
9. Conditions affecting the welfare of the teachers and pupils of the involved districts.
10. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts.
11. The educational needs of local communities in the involved districts.
12. An objective in economizing in the use of transportation and administrative services.
13. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts.

14. A reduction in disparities in per-pupil valuation between school districts and the objective of equalization of educational opportunities for pupils.
15. Any other relevant factors which, in the judgment of the county committee, are of importance.

Following the county committee's consideration of testimony and documentary evidence with respect to the factors listed in subsections 1 through 15, the committee shall make specific findings with reference to those factors to which testimony or documentary evidence was directed in proceedings before the committee.

The county committee shall keep a record of the hearing on the reorganization of school districts and of all findings and terms of adjustment of property, debts, and liabilities among the districts involved, and shall submit the same to the state board at the time of submitting the reorganization proposal for state board approval. ~~A subcommittee composed of not fewer than three members of a county committee, or three members of the county committee of each county concerned in case territory in two or more counties is involved; may hold any hearing that the county committee is required to hold.~~

**SECTION 8. AMENDMENT.** Section 15-27.3-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-06. Reorganized school districts - Determination of tax levy.** Prior to the submission of a reorganization proposal, the county committee or committees shall determine the amount necessary to meet the expenses of the proposed reorganized district and shall propose a tax levy sufficient to meet those expenses. The proposed tax levy must be submitted to the state committee board as a part of the reorganization proposal and, if approved by the state committee board, must be included as a part of the proposal and submitted to the electors of the proposed new district as provided in this chapter. Tax levies submitted as a part of a reorganization proposal which is approved as provided in this chapter are not subject to mill levy limitations provided by law.

**SECTION 9. AMENDMENT.** Section 15-27.3-14 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-14. Continuance of elementary schools in reorganized districts.** Each elementary school included in reorganized school districts must be kept in session as provided by law, except that any school may be discontinued when the school board in the district where the school is located, by a unanimous four-fifths vote, approves its closing. The school board may reopen such school at any time upon its own motion. The school may be reopened only at the beginning of the next regular school term which follows by at least ninety days the date of the school board's action.

**SECTION 10. AMENDMENT.** Section 15-27.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.4-01. Dissolution of public school districts - Responsibility of county committee - Duty of county superintendent.**

1. The county committee shall schedule and provide notice of a public hearing to dissolve a school district and attach the territory to other school districts upon ~~the following occurrences:~~

1. ~~Receipt~~ receipt by the county committee of notice from the county superintendent that:
  - a. A school district can no longer levy sufficient taxes to carry on normal school operations;
  - b. A school district within the county has not operated a school as is required by section 15-27.1-11;
  - c. There exists territory not organized into a school district;
  - d. Any portion of a school district within the county has been severed from the district by the expansion and growth of a city and the severed portion is not contiguous with the district; or
  - e. The school district has determined that it is in the best interests of its students to dissolve and become attached to surrounding school districts. The school district shall make this determination whenever the objective is to liquidate the school district. The annexation procedures under chapter 15-27.2 may not be used to annex, through one or more annexation petitions, all of the territory in a school district to surrounding school districts.
2. When any portion of a school district has been left out of a school district reorganization, the county committee shall, within forty-five days after voter approval of the school district reorganization proposal, order a hearing pursuant to section 15-27.4-02 for the purpose of determining to which school district or districts the remaining territory should be attached.
3. After approval by the state board of the proposed dissolution, the The county committee shall provide for the attachment of the territory of the dissolved district to one or more adjoining school districts effective July first next following the approval unless another effective date is provided for by the county committee. Qualified electors residing in the attached territory are entitled to vote and hold office in the school district to the same extent as all other qualified electors residing in the district, and the territory is part of the school district as fully in every respect as if it had been included in the district when organized. This section does not prevent the district from providing for the education of the children to the extent that its current budget in the judgment of the school board will permit, or relieve the district from any existing responsibility for the education of children attending its schools before the effective date of the order. This section does not change the effect of any election held within the school district pursuant to chapter 15-48 before the effective date of the order.
4. Receipt of notice by the county committee from the county superintendent under subsection 1 renders ineffective all annexation petitions involving any of the same territory that have not been approved by the state board as of the date the county committee received the notice. In addition, no annexation petitions involving any of the same territory may be filed with the county superintendent.

<sup>84</sup> **SECTION 11. AMENDMENT.** Subsection 3 of section 15-27.4-02 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~At or after~~ After the hearing, the county committee shall by resolution order the district dissolved and its territory attached, or the unorganized territory attached, to one or more adjoining school districts in such manner as will, in its judgment, provide the best educational opportunities for pupils of the public schools and the wisest use of public funds for the support of the public school system in the school districts and attached territory.

**SECTION 12.** Section 15-27.4-02.1 of the North Dakota Century Code is created and enacted as follows:

15-27.4-02.1. Unobligated cash balance up to ten thousand dollars. Any unobligated cash balance up to ten thousand dollars which is not designated for indebtedness must be held in a separate fund by the county auditor of the county in which the majority of the territory of the dissolved school district is located. The county auditor shall hold the fund for one year after the effective date of the dissolution. During that year, the county auditor shall accept assets and pay debts attributable to the dissolved school district which were not resolved before the effective date of the dissolution. At the end of the year, unless determined otherwise by the state board when the dissolution was approved, the cash balance remaining in the fund must be divided and distributed to the school districts in the same proportion as taxable valuation received by the school districts to which the territory of the dissolved school district was attached.

<sup>85</sup> **SECTION 13. AMENDMENT.** Section 15-27.4-03 of the North Dakota Century Code is amended and reenacted as follows:

15-27.4-03. Unobligated cash balance of dissolved school district in excess of ten thousand dollars - Tax credits or refunds.

1. ~~The~~ Any unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for those who own property within the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year or years following the dissolution based on the previous five-year average of the total mills levied for education by the district being ~~annexed~~ dissolved, as calculated by the county auditor. If a school district is dissolved and attached to more than one school district, the credit that those who own property within the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to dissolution.

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<sup>84</sup> Section 15-27.4-02 was also amended by section 2 of House Bill No. 1042, chapter 178.

<sup>85</sup> Section 15-27.4-03 was also amended by section 1 of House Bill No. 1302, chapter 180.



2. Upon approval of the board of county commissioners, any school district required to provide a tax credit under subsection 1 may provide a cash refund in lieu of the tax credit. At the request of the county auditor, the school district holding the unobligated cash balance shall pay to the county treasurer the amount to be paid to those who own property within the dissolved district. The treasurer shall issue the refund to the owner of the property as shown on the county's assessment list at the time of payment. If there is a lien for unpaid taxes against any property, the treasurer shall first apply the tax credit toward any outstanding balance. Any amount remaining may then be paid to the property owner. The cash refunds must be calculated proportionately to the total taxable value of the dissolved district during the last year taxes were levied.

**SECTION 14. AMENDMENT.** Section 15-40.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-07.3. High school per-pupil per student payments - ~~Dissolution or annexation~~ Reorganization of school districts.**

1. If any school district receiving per-pupil per student payments calculated under section 15-40.1-07 ~~annexes to or~~ reorganizes with another school district under chapter 15-27.3 or 15-27.6, the school district resulting from the ~~annexation or~~ reorganization is entitled to receive the same per-pupil payments for each high school pupil as each separate school district received for each high school pupil prior to the ~~annexation or~~ reorganization, for a period of four years.
2. The weighting factor for each district will be adjusted proportionately over a period of two years, following the period of time provided in subsection 1, until the adjusted weighting factor equals the weighting factor for the combined enrollment resulting from the ~~annexation or~~ reorganization.

<sup>86</sup> **SECTION 15. AMENDMENT.** Subsection 2 of section 15-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. When a school district ceases to provide educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice, outside their district of residence without going through the procedures outlined in section 15-40.2-05. The school district of residence shall ~~either pay tuition or seek a tuition waiver from~~ to the admitting school district.

<sup>87</sup> **SECTION 16. AMENDMENT.** Subsection 1 of section 15-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>86</sup> Section 15-40.2-01 was also amended by section 4 of Senate Bill No. 2159, chapter 173.

<sup>87</sup> Section 15-40.2-04 was also amended by section 1 House Bill No. 1044, chapter 196.

1. a. Except as provided in this subsection, any school district that admits nonresident students to its schools, as provided by this chapter, shall charge tuition for those students. School districts have the option of charging tuition for nonresident students enrolled in an approved alternative education program. The whole amount of the tuition must be paid by the district from which the student is admitted, in accordance with section 15-40.2-03, or by the student's parent or guardian, in accordance with section 15-40.2-06.
- b. Except as otherwise provided, any school district that fails to charge and collect tuition for nonresident students as provided for in section 15-40.2-03 and this section shall forfeit foundation payments for those nonresident students for whom tuition is not paid. A school district may accept a nonresident student from another school district in this state which offers the same grade level as that in which the student is enrolled, without a charge and collection of tuition if a written agreement is made between the sending and receiving districts. No written agreement is necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged. A school district may accept a nonresident student described in section 15 of this Act from another school district in this state without a charge and collection of tuition and without a written agreement.
- c. No school district may charge or collect from any nonresident student, parent or guardian of a nonresident student, or the district of the student's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident students.

**SECTION 17.** A new section to chapter 15-40.3 of the North Dakota Century Code is created and enacted as follows:

Students not subject to this chapter. A student, who as the result of dissolution resides in a district other than the one the student chooses to attend at the time of dissolution, is not subject to the provisions of this chapter and may attend school in the chosen school district. The student may not be considered a student in average daily membership in the student's school district of residence for purposes of section 15-40.3-02.

Approved April 12, 1995

Filed April 13, 1995

**CHAPTER 178****HOUSE BILL NO. 1042**

(Legislative Council)  
(Interim Education Finance Committee)

**SCHOOL DISTRICT ANNEXATION RESIDENCY  
REQUIREMENTS**

AN ACT to amend and reenact subsection 2 of section 15-27.2-01 and subsection 3 of section 15-27.4-02 of the North Dakota Century Code, relating to residency requirements in school district annexations and dissolutions.

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

<sup>88</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 15-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The annexation petition must:

a. Be obtained from the county superintendent;

b. Identify all of the land area to be annexed before it is circulated;

c. Identify one student who resides in the area to be annexed and who will attend a public school during the school year following approval of the petition.

d. Be signed in the presence of the carrier of the petition; and

~~d.~~ e. Be submitted to the county superintendent of the county in which the majority of land identified in the petition is located.

<sup>89</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 15-27.4-02 of the North Dakota Century Code is amended and reenacted as follows:

3. At or after the hearing, the county committee shall by resolution order the district dissolved and its territory attached, or the unorganized territory attached, to one or more adjoining school districts in such manner as will, in its judgment, provide the best educational opportunities for pupils of the public schools and the wisest use of public

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<sup>88</sup> Section 15-27.2-01 was also amended by section 3 of Senate Bill No. 2209, chapter 177.

<sup>89</sup> Section 15-27.4-02 was also amended by section 11 of Senate Bill No. 2209, chapter 177.

funds for the support of the public school system in the school districts and attached territory. The county committee may not order the attachment of any territory unless a minor resides within the boundaries of the territory to be attached.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 179

### SENATE BILL NO. 2059

(Legislative Council)  
(Interim Education Finance Committee)  
(Representatives Keiser, Kaldor)

## SCHOOL DISTRICT TRANSPORTATION AND REORGANIZATION

AN ACT to amend and reenact sections 15-27.3-10, 15-27.3-19, 15-27.3-20, 15-40.1-16, and 15-40.1-18 of the North Dakota Century Code, relating to the school district transportation services and changes in school district reorganization proposals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-27.3-10 of the North Dakota Century Code is amended and reenacted as follows:

15-27.3-10. Transportation required provisions effective until changed. A  
Any provision in a reorganization proposal must provide for relating to the  
transportation of students and must specify if family-type or public schoolbus-type of  
transportation shall be used; and if the proposal is approved by the voters of the new  
district, then the school board of the district shall provide adequate and practical  
transportation of the type specified, except that if family-type transportation is  
specified, the school board may later substitute public schoolbus-type transportation.  
A reorganized school district shall establish a schedule of transportation payments as  
is proper under the circumstances affecting that district; but the schedule of  
payments may not be less than the amount determined under subsection 2 of section  
15-40.1-16 for state aid for family-type transportation effective before August 1,  
1995, must remain in effect until changed in accordance with section 15-27.3-19.

**SECTION 2. AMENDMENT.** Section 15-27.3-19 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-19. Changes in reorganization proposal.** At any time after the reorganization proposal has become effective, any provision of the reorganization proposal, including provisions affecting the adjustment of assets and liabilities but excepting provisions defining the boundaries of the district, may be changed by a majority vote of the qualified electors without approval of the state board or the county committee. The school board in the reorganized district may, upon its own motion, or shall, upon the filing with it of a petition signed by qualified electors equal in number to twenty percent of the persons enumerated in the most recent school district census, unless the census is greater than four thousand, in which case only fifteen percent of the number of persons enumerated in the school census is required, submit the question of authorizing a change in the school district's adopted reorganization proposal at the next regular or special election. However, not fewer than twenty-five signatures of qualified electors is required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In districts with fewer than twenty-five qualified electors, the county superintendent for the county in which the school is located shall determine the number of qualified electors in the district. If a majority of all votes cast by the electors residing in each of the

~~geographic areas~~ district is in favor of the proposed change, then the proposed change is effected. If a reorganization plan has been in effect for at least ten years, any proposed change to geographic voting areas is effective upon a majority vote in an election at large by the qualified electors of the district. A school board in a reorganized school district may change, by resolution, to at large voting for school board candidates if there is a variance of more than ten percent in the population between any of the district's established geographic areas with resident candidates.

**SECTION 3. AMENDMENT.** Section 15-27.3-20 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-20. Powers of school board in reorganized district - Exceptions.** After five years from the effective date of the reorganization proposal, the school board of a reorganized district shall exercise the powers granted to a school board by section 15-29-08 or any other provisions of law regardless of limitations contained in the reorganization proposal. This section does not authorize the school board of a reorganized district to exercise any powers prohibited or limited by section ~~15-27.3-10~~, 15-27.3-17; or 15-27.3-19.

**SECTION 4. AMENDMENT.** Section 15-40.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-16. Aid for transportation.**

1. There must be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school ~~within the incorporated limits of a city~~, the following amounts:
  - a. For schoolbuses and school vehicles transporting students who live outside the incorporated limits of the city in which ~~the students' school the student is enrolled~~ is located, a sum equal to twenty-five cents per mile [1.61 kilometers] for vehicles having a capacity of nine or fewer students and sixty-seven cents per mile [1.61 kilometers] for schoolbuses having a capacity of ten or more students and for schoolbuses and school vehicles transporting students who live within the incorporated limits of a city in which the students' school is located, a sum equal to twenty-five cents per mile [1.61 kilometers]. School districts qualifying for payments for buses having a capacity of ten or more students are entitled to an amount equal to ~~twenty-eight~~ forty cents per day for each public school student living outside the city limits who is transported in such buses.
  - b. For students who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city within which the school that the students attend is located, a sum equal to ~~seventeen and one-half~~ twenty cents per student per one-way trip. ~~However, no payment may be made under this subdivision for a student who rode on a vehicle for which payments are claimed under subdivision a.~~

The mileage payments provided for in this subsection must be made to each school district for transporting students to and from school. Payments may be made only to school districts operating schoolbuses in

accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to compliance with the laws of this state in regard to schoolbuses and their drivers must be made in such manner and detail as the superintendent of public instruction may require at the time an application is made for payments provided under this subsection.

2. For students transported by family transportation in accordance with section 15-34.2-03, the state shall reimburse school districts in an amount determined by using the rate of forty cents per day for each mile [1.61 kilometers] over two miles [3.22 kilometers] according to the distance between the student's home and the school. Such distance must be measured by the route from the front door of the school attended to the front door of the family's residence according to the most convenient public course of travel.
3. The superintendent of public instruction shall develop, and require that school districts use, a uniform cost accounting system to calculate and administer the reimbursement provided for and in this section. The superintendent shall prepare all forms and statements that may be necessary for a school district to apply for the same.

**SECTION 5. AMENDMENT.** Section 15-40.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-18. State transportation payments to school districts.** The superintendent of public instruction shall determine the total amount of payments to be made to the school districts for transportation aid. The office of management and budget shall pay the sum certified by the superintendent of public instruction to each school district. Payments shall must be made in the same manner and at the same time as other payments from the state to school districts are made, as provided in section 15-40.1-05. ~~During the 1993-94 school year, no school district may receive more than one hundred percent of the actual costs it incurs in the provision of transportation services. During the 1994-95 school year, no~~ No school district may receive more than ninety percent of the actual costs it incurs in the provision of transportation services. ~~The superintendent of public instruction shall calculate the difference between the actual costs incurred by all districts in the provision of transportation services during the 1994-95 school year and ninety percent of the actual costs incurred by all school districts in the provision of transportation services during the previous school year. The superintendent shall use the difference to increase the per student payments provided for in subsections 1 and 2 of section 15-40.1-16 by the same amount under each subsection.~~ For purposes of this section, actual costs include the transportation operating expenditures reported to the superintendent of public instruction for the most recent year plus the eight-year average cost of transportation equipment determined by the superintendent of public instruction.

Approved April 17, 1995  
Filed April 18, 1995

**CHAPTER 180****HOUSE BILL NO. 1302**

(Representatives Jacobs, Froseth, Grumbo, Clark, Thoreson)  
(Senator Wanzek)

**SCHOOL DISTRICT DISSOLUTION TAX CREDITS**

AN ACT to amend and reenact section 15-27.4-03 of the North Dakota Century Code, relating to tax credits resulting from the dissolution of school districts.

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

<sup>90</sup> **SECTION 1. AMENDMENT.** Section 15-27.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.4-03. Unobligated cash balance of dissolved school district - Tax credits.** The unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for those who own property within the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year or years following the dissolution based on the previous five-year average of the total mills levied for education by the district being annexed, as calculated by the county auditor. If a school district is dissolved and attached to more than one school district, the credit that those who own property within the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to dissolution. Upon approval of the board of county commissioners, a political subdivision required to provide a tax credit under this section may provide a cash refund in lieu of the tax credit. At the request of the county auditor, the school district holding the unobligated cash balance shall pay to the county treasurer the amount to be paid to those who own property within the dissolved district. The treasurer shall issue the refund to the owner of the property, as shown on the county's assessment list at the time of payment. If there is a lien for unpaid taxes against the property, the treasurer shall first apply the tax credit toward the outstanding balance. The amount remaining may then be paid to the property owner.

Approved March 21, 1995

Filed March 21, 1995

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<sup>90</sup> Section 15-27.4-03 was also amended by section 13 of Senate Bill No. 2209, chapter 177.



**CHAPTER 181****SENATE BILL NO. 2444**

(Senator Freborg)

**SCHOOL BOARD ELECTIONS**

AN ACT to amend and reenact section 15-28-02 of the North Dakota Century Code, relating to definitions of rural and urban areas for purposes of school board membership elections; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-28-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-28-02. Rural members of school board - Definitions.** When a school district is composed of six or more sections of land having a city within its boundaries and when the population of the school district does not exceed two thousand persons, at least two members of the school board must be residents upon farms outside the corporate limits of the city. When a school district is composed of six or more sections of land and has within its boundaries a city with a population of more than two thousand but less than fifteen thousand persons, and has at least twenty-five families residing upon farms outside the corporate limits of the city but upon farmsteads located within the school district and sending children to school in such school district, at least one member of the board must be a resident upon a farm outside the corporate limits of the city. However, if the taxable valuation of agricultural property in the rural area of a school district containing a city is greater than the taxable valuation of the urban area of the district, the majority of the members of the school board shall reside upon farms outside the corporate limits of the city; provided, that all voters of the school district, regardless of whether the district is reorganized, are entitled to vote for each candidate to the school board whenever the variance in population between any of the geographic voting areas of the school district is in excess of ten percent.

For purposes of this section, school board members must be considered as rural members and as residing upon a farm if they reside within a city that according to the latest federal census has a population of two hundred or less and is located within a school district that has four or more incorporated cities within its boundary. For purposes of this section:

1. "Agricultural property" means property outside the limits of an incorporated city and zoned agricultural.
2. "Rural" means property outside the limits of an incorporated city.

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

Approved March 15, 1995  
Filed March 15, 1995

**CHAPTER 182****HOUSE BILL NO. 1075**

(Representative Dobrinski)

**SCHOOL BOARD MEMBER TERMS**

AN ACT to amend and reenact section 15-28-03 of the North Dakota Century Code, relating to the terms of office of school board members.

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

**SECTION 1. AMENDMENT.** Section 15-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-28-03. Annual and special elections - When held - Officers elected - Terms - Optional joinder with city election or primary election.**

1. An annual election must be held in each public school district on a date between April first and June thirtieth, at the discretion of the school board. At each annual election, members of the school board must be elected to fill all vacancies ~~therein~~ caused by the expiration of terms of office or otherwise. Each member elected shall serve for a term of three years, except when elected to serve an unexpired term. The term of any elected member commences at the annual meeting in July following the member's election, and continues until a successor is elected and qualified. In addition to the annual election, a special election may be held at any time, if approved by a resolution of the school board, for any purpose provided for by law.
2. The annual election provided for in this section may, upon resolution of the school board, be held in conjunction with the regularly scheduled city election, established by state law or established pursuant to the home rule powers of the city, held in a city located wholly or partially within that school district. The school board may enter into an agreement with the governing body of the city concerning the sharing of election personnel, the printing of election materials, the use of one set of pollbooks, and the apportioning of election expenses. If only one set of pollbooks is used, the pollbook must contain a reference indicating the voter's eligibility to vote in the city or school board election, or both. References in this chapter to the date of school board elections, insofar as they relate to a school board that holds its elections in conjunction with a city, are deemed to mean or to refer to the date of the applicable city election.
3. Such a A school board ~~has the further option to~~ may convert the terms of office of its members to four years rather than three years in order that school board elections like city elections may be held biennially rather than annually. A school board may convert the future terms of its members to four years by passing a resolution requiring the conversion. Upon the expiration of the three-year term of each incumbent in office on the date the resolution is passed, the term of office for that position on the board is four years, except that the resolution may provide that one of the positions being converted to a

four-year term must first be converted to one two-year term before becoming a four-year term. If the resolution provides for one two-year term, that term must be chosen by lot. If the extension of a term to four years results in the term ending in an odd-numbered year, one additional and transitional term of three years must be provided before the term becomes a four-year term of office. Once the school board has accomplished the transition to biennial elections, references in this title to annual elections as they apply to the school board are deemed to mean biennial elections, and the election held pursuant to section 15-28-11 must be held in even-numbered years.

4. A school board that has converted the terms of its members to four years may revert to three-year terms by passing a resolution providing for the reversion. When the four-year term of each board member holding office on the date of the resolution's passage expires, the term of office for that position becomes three years.

- ~~3-~~ 5. If the school election is held in conjunction with the primary election, the school board may enter into an agreement with the governing body of the county or counties in which the district lies concerning use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 183****SENATE BILL NO. 2333**

(Senator Grindberg)

(Representatives Austin, Carlson)

**SCHOOL ELECTION FILING DEADLINES**

AN ACT to amend and reenact subsection 2 of section 15-28-09 of the North Dakota Century Code, relating to filing deadlines for school elections.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 15-28-09 of the North Dakota Century Code is amended and reenacted as follows:

2. When a school annual election or special election is held in conjunction with a statewide election, any candidate for election as a member of the school board of a school district shall file with the business manager of the school district, not less than ~~fifty-five~~ sixty days before the election and before four p.m. on the ~~fifty-fifth~~ sixtieth day, a statement setting forth the candidate's name and the position for which that person is a candidate. A statement which is mailed to the business manager must be in the business manager's physical possession before four p.m. on the ~~fifty-fifth~~ sixtieth day before the election.

Approved March 2, 1995

Filed March 3, 1995

## CHAPTER 184

## HOUSE BILL NO. 1040

(Legislative Council)  
(Interim Education Finance Committee)  
(Senator O'Connell)

## SCHOOL BOARD MEETINGS SCHEDULE

AN ACT to amend and reenact section 15-29-02 of the North Dakota Century Code, relating to school board meetings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-29-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-29-02. Regular and special meetings** Meetings of board - Notice of special meetings - Schedule.

1. The annual meeting of ~~the~~ a school board must be held during the month of July following the annual election, on a date called by the president and convenient to the rest of the members, with ~~such~~ notice given as ~~is~~ prescribed in ~~this section~~ subsection 3 for special meetings; ~~at which time the newly~~ Newly elected members shall assume the duties of their offices at that time. ~~The~~
2. Once each calendar month thereafter, a board shall hold a regular meeting for the transaction of business ~~once in each calendar month thereafter; provided, however, that the~~ The board of any school district ~~in which are located~~ having only one-room or two-room schools may meet as often as the board deems necessary, but not less than four times in each year.
3. Special meetings may be called by the president, or by any two members of ~~the~~ a board. Written or printed notice of a special meeting must be given to each member of ~~the~~ a board; ~~provided, however, that the attendance~~ Attendance by a board member at any meeting; without objection; by any member constitutes a waiver of the notice ~~required to be given to such~~ requirement for that member.
4. A school board operating under an academic cooperative agreement approved by the superintendent of public instruction may participate in multiboard meetings in addition to, instead of, or in conjunction with the regular board meetings required by subsection 2. Multiboard meetings must be for the purpose of pursuing joint academic or cooperative activities and must be held at the times and locations agreed to by the presidents of the participating boards. In addition to any other requirements set forth in section 44-04-20, the presidents of each school

board shall ensure that public notice of each multiboard meeting in which the school board will participate is published in the major local newspapers of general circulation at least one week before the meeting date.

Approved March 6, 1995

Filed March 6, 1995

**CHAPTER 185****SENATE BILL NO. 2169**

(Senator Lips)

**SCHOOL BOARD MEMBER COMPENSATION**

AN ACT to amend and reenact section 15-29-05 of the North Dakota Century Code, relating to the compensation of school board members.

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

**SECTION 1. AMENDMENT.** Section 15-29-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-29-05. Compensation of board members.** Each ~~member of the~~ school board ~~may receive not in excess of twenty-five dollars as shall set a level of~~ compensation for ~~each meeting of the board actually attended~~ services payable to its members, provided that no member may receive more than one thousand dollars annually for this purpose. In addition ~~thereto~~ to compensation for services, each member may be reimbursed for all necessary meals and lodging and travel expense actually incurred while engaged on official business of the board, at the same rate as provided for state officers and employees. Any mileage claimed may not exceed the number of miles [kilometers] between the points traveled as measured by the most usual route.

Approved March 1, 1995

Filed March 1, 1995

## CHAPTER 186

## SENATE BILL NO. 2491

(Senators LaFountain, Grindberg, Heinrich, Heitkamp)  
(Representatives Boucher, Kerzman)

AMERICAN INDIAN LANGUAGE AND CULTURE  
TEACHER CERTIFICATION

AN ACT to create and enact a new section to chapter 15-29 and a new section to chapter 15-38 of the North Dakota Century Code, relating to the provision of teaching services by persons certified as instructors in the areas of North Dakota American Indian languages and culture; and to amend and reenact subsection 10 of section 15-29-08, section 15-36-12, subsection 11 of section 15-39.1-04, sections 15-41-25, 15-47-42, and 15-47-46 of the North Dakota Century Code, relating to teacher certification.

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

<sup>91</sup> SECTION 1. AMENDMENT. Subsection 10 of section 15-29-08 of the North Dakota Century Code is amended and reenacted as follows:

10. To contract with, employ, and pay all teachers in the schools and, for cause, to dismiss or suspend any teacher when the interests of the school may require it. Every Except as provided in section 2 of this Act, every teacher shall be required to must hold a valid North Dakota teaching certificate issued by the superintendent of public instruction. No person who is related to any member of the board by blood or marriage ~~shall~~ may be employed as a teacher without the concurrence of two-thirds of the board.

SECTION 2. A new section to chapter 15-29 of the North Dakota Century Code is created and enacted as follows:

School boards - Authority to contract for certain services. A school board may contract with and provide reimbursement for the provision of teaching services by a person certified as an instructor in the areas of North Dakota American Indian languages and culture by the education standards and practices board.

SECTION 3. AMENDMENT. Section 15-36-12 of the North Dakota Century Code is amended and reenacted as follows:

15-36-12. Certificate must be exhibited to business manager of the school district - Completion of term after expiration of certificate. No teacher is entitled to receive any compensation for the time ~~he~~ the teacher teaches in a public school without a certificate to teach which lawfully is issued and in force in the county in which the school is taught. Prior to receiving ~~his~~ a salary for the first month taught in a school district, a teacher must exhibit ~~his~~ the teacher's certificate to the business

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<sup>91</sup> Section 15-29-08 was also amended by section 3 of House Bill No. 1178, chapter 203.



manager of the school district. If a teacher's certificate expires by its own limitations within six weeks of the close of the term, the teacher may finish the term without reexamination or renewal thereof. This section does not apply to any person providing teaching services in accordance with section 2 of this Act.

SECTION 4. A new section to chapter 15-38 of the North Dakota Century Code is created and enacted as follows:

Education standards and practices board - Certification of North Dakota American Indian language instructors. The education standards and practices board may certify an individual as an instructor of North Dakota American Indian languages and culture if the individual is recommended for certification to teach North Dakota native languages by the indigenous language boards created by the four North Dakota tribal governments of this state's reservations and if the individual:

1. Displays competence in North Dakota American Indian languages and culture and has successfully completed a three-semester-hour course in classroom instruction at a tribal college or other institution of higher education; or
2. Holds a baccalaureate degree and has knowledge of and experience in North Dakota American Indian languages and culture.

<sup>92</sup> SECTION 5. AMENDMENT. Subsection 11 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11. "Teacher" ~~includes~~ means:

- a. All persons ~~who are~~ certified to teach in this state who are contractually employed in teaching in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state; ~~except that the~~. The superintendent and assistant superintendent of the developmental center at Grafton may be brought within this definition at their option.
- b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, developmental center at Grafton supervisors and inspectors, the executive director and professional staff of the North Dakota education association, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association.
- c. The executive director of the North Dakota school boards association, the executive secretary of the fund, the executive

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<sup>92</sup> Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2170, chapter 191; section 10 of Senate Bill No. 2012, chapter 34; and section 25 of House Bill No. 1027, chapter 120.

director and professional staff of the North Dakota council of school administrators, and certified staff of teachers centers, but only if the person was previously a member of and has credits in the fund.

- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

**SECTION 6. AMENDMENT.** Section 15-41-25 of the North Dakota Century Code is amended and reenacted as follows:

**15-41-25. High schools - Teacher qualification.** ~~Not later than July 1, 1961~~ Except as provided in section 2 of this Act, every teacher in any high school in this state teaching any of the course areas or fields mentioned in section 15-41-24 shall have a valid teacher's certificate and shall have a major or minor in the course areas or fields that ~~he the teacher~~ is teaching if ~~such the~~ high school is to receive any approval by the department of public instruction. However, a teacher granted a certificate to teach in the disciplines of trade, industrial, technical, and health under chapter 15-20.1 and possessing neither a major nor a minor in the field in which ~~he the teacher~~ is employed may not affect the approval of the employing school district.

**SECTION 7. AMENDMENT.** Section 15-47-42 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-42. Status and authority of student and eminence-credentialed teachers.** Any student teacher; ~~during the time the student teacher is assigned as a student teacher, or eminence-credentialed teacher hired or assigned in this capacity~~ must be given the same legal authority and status as if the student or eminence-credentialed teacher were a certificated employee of the school district in ~~which he is assigned~~. The authority of the student or eminence-credentialed teacher ~~must extend~~ extends to all aspects of student management or discipline, ~~in the~~ handling of confidential student records of students, and ~~in to~~ all other aspects of legal authority granted to certificated ~~employees of the school districts~~ teachers in the state. The student or eminence-credentialed teacher must be deemed a certificated employee of the district with respect to acts performed by ~~him the student or eminence-credentialed teacher~~ at the direction, suggestion, or consent of the ~~certificated district~~ employees under whose supervision and control the ~~holder student or eminence-credentialed teacher~~ performs his duties, whether or not the duties are performed entirely in the presence of ~~the district employees of the district~~ assigned to supervise the ~~holder student or eminence-credentialed teacher~~, and must be deemed an employee of the school district within the meaning of sections 32-12.1-05 and 39-01-08 relating to liability insurance carried by political subdivisions. For purposes of this section, "eminence-credentialed teacher" means a person providing teaching services in accordance with section 2 of this Act.

**SECTION 8. AMENDMENT.** Section 15-47-46 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-46. Teacher qualification - Kindergarten through grade eight - Exceptions.**

1. Except as provided in subsections 2 through 4 or section 2 of this Act, all teachers teaching kindergarten through grade eight must hold a teaching certificate and:

- a. A minimum of a kindergarten endorsement to teach kindergarten;
  - b. A major, minor, or endorsement in elementary education to teach elementary education in grades one through eight; or
  - c. An endorsement in kindergarten or elementary education from the superintendent of public instruction attained prior to or within two years of the assignment to teach kindergarten or elementary education. An endorsement may be obtained by completing teaching requirements and a minimum number of credit hours in courses prescribed by the superintendent of public instruction.
2. A teacher who holds a teaching certificate and a major or an endorsement in middle school education attained prior to, or within two years of, the assignment to teach middle school may teach grades five through eight.
  3. A teacher who holds a teaching certificate and a major or minor in the course area or field in which the teacher is teaching may teach grades seven and eight.
  4. A teacher who holds a teaching certificate and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, and computer education in kindergarten through grade eight.

Approved April 4, 1995  
Filed April 4, 1995

## CHAPTER 187

### HOUSE BILL NO. 1348

(Representatives Drovdal, Kempenich, Boehm)  
(Senators Bowman, Heinrich, O'Connell)

## NONPUBLIC HIGH SCHOOL APPROVAL

AN ACT to create and enact a new section to chapter 15-41 of the North Dakota Century Code, relating to the approval of nonpublic high schools; and to amend and reenact subsection 1 of section 15-34.1-03 of the North Dakota Century Code, relating to compulsory attendance.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 15-34.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. That the child is in attendance for the same length of time at a parochial or private school approved by the county superintendent of schools and the superintendent of public instruction. No Except as provided in section 2 of this Act, no such school shall be approved unless the teachers therein are legally certificated in the state of North Dakota in accordance with section 15-41-25 and chapter 15-36, the subjects offered are in accordance with sections 15-38-07, 15-41-06, and 15-41-24, and such school is in compliance with all municipal and state health, fire, and safety laws.

**SECTION 2.** A new section to chapter 15-41 of the North Dakota Century Code is created and enacted as follows:

Nonpublic high schools - Approval criteria. The superintendent of public instruction shall approve any nonpublic high school having an enrollment of fifty students or fewer, provided the school meets the following requirements:

1. The school meets all statutory requirements of subsection 1 of section 15-34.1-03 regarding the subjects to be taught, the length of the school year, and health, fire, and safety standards.
2. If the school uses telecommunications or other electronic means to deliver curricular programs, the programs are prepared by persons holding at least baccalaureate degrees and delivered in the presence of a person who holds a North Dakota secondary teaching certificate or who meets or exceeds the average cutoff scores of the states that have normed the national teacher's examination.
3. The school employs at least one state certificated high school teacher to serve in a supervisory capacity for each twenty-five students.
4. The average composite scholastic achievement test scores of students enrolled in the school or the students' scores achieved on comparable standardized tests meet or exceed the national average test scores.

5. The school and its employees are governed by a board of directors that includes parental representation.

Approved March 7, 1995

Filed March 8, 1995

## CHAPTER 188

### HOUSE BILL NO. 1488

(Representatives Boehm, Rennerfeldt, Wardner)  
(Senators Christmann, Wanzek)

## HOME-BASED SCHOOL INSTRUCTION

AN ACT to amend and reenact sections 15-34.1-06 and 15-34.1-07 of the North Dakota Century Code, relating to home-based instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-34.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-34.1-06. Home-based instruction.** Home-based instruction is an educational program for students based in the child's home and supervised by the child's parent or parents. A parent who provides home-based instruction may only invoke the home-based instruction exception to compulsory attendance. A parent is qualified to supervise a program of home-based instruction if the parent is certified to teach in North Dakota; has a high school education or has received a general educational development certificate and is monitored by a certified teacher baccalaureate degree; or has met or exceeded the cut-off score of the national teacher exam given in North Dakota, or in any other state if North Dakota does not offer such a test. A parent who has a high school diploma or a general education development certificate is qualified to supervise home-based instruction but must be monitored by a certificated teacher during the first two years the parent supervises that instruction, and if the child being instructed receives a composite standardized achievement test score below the fiftieth percentile nationally, the monitoring required by this section must continue during the following school year or longer if the child has not achieved the fiftieth percentile. Home-based instruction must include those subjects required to be taught in accordance with sections 15-38-07, 15-41-06, and 15-41-24 and must be provided for at least four hours per day for a minimum of one hundred seventy-five days per year. Every parent supervising home-based instruction shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. A parent shall furnish these records to any school to which the child may transfer upon request of the superintendent or other administrator of that public school district. A parent intending to supervise home-based instruction for the parent's child shall file an annual statement with the superintendent of the public school district in which the child resides. If the school district does not employ a local school superintendent, the statement must be filed with the county superintendent of schools for the county of the child's residence. The statement must be filed at least thirty days prior to the beginning of the school semester for which the parent requests an exemption except when residency of the child is not established by that date. If residency has not been established, the statement must be filed within thirty days of the establishment of residency within the district. The statement must include:

1. The names and addresses of the parent who will supervise and the child who will receive home-based instruction;
2. The date of birth and grade level of each child;

3. The intention of the parent to supervise home-based instruction;
4. The qualifications of the parent who will supervise the home-based instruction;
5. A list of courses or extracurricular activities in which the child intends to participate in the public school district;
6. Proof of an immunization record as it relates to section 23-07-16;
7. Proof of identity as it relates to section 54-23.2-04.2; and
8. An oath or affirmation that the parent will comply with all provisions of this chapter.

**SECTION 2. AMENDMENT.** Section 15-34.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**15-34.1-07. Students receiving home-based instruction - Quality assurance.** In order to meet the state's compelling interest in assuring that citizens of the state receive a quality education, the following minimum indices of quality education are established:

1. A standardized achievement test used by the public school in the school district in which the parent resides or, if requested by the parent, a nationally normed standardized achievement test used by a state-approved nonpublic school must be given ~~annually~~ to each child receiving home-based instruction ~~starting with grade three and annually thereafter in grades three, four, six, eight, and eleven.~~ The test must be given in the child's learning environment or the public school and must be administered by a certified teacher. The cost of such testing must be borne by the local school district in which the parent resides if the test is administered by a certified teacher employed by a public school district or by the parent of the child if the test is ~~administered by a certified teacher not employed by a public school~~ a nationally normed standardized achievement test requested by the parent. Results of such testing must be filed with the local public school superintendent. If the parent resides in a school district which does not employ a local school superintendent, the results must be filed with the county superintendent of schools for the county of the parent's residence.
2. If the child's basic composite score on a standardized achievement test falls below the thirtieth percentile nationally, the child must be professionally evaluated for a potential learning problem. If the multidisciplinary assessment team evaluation determines that the child is not handicapped according to the eligibility criteria of the department of public instruction and the child does not require specially designed instruction according to rules adopted by the department of public instruction, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction a statement, from an appropriately licensed professional, that the child is currently making reasonable academic progress when the learning abilities of the child are taken into consideration. If such statement is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03. If the evaluation of the multidisciplinary assessment team determines that the child is

handicapped, but not developmentally disabled, according to the eligibility criteria of the department of public instruction, and the student requires specially designed instruction due to the handicap and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction an individualized education program plan, formulated within rules adopted by the department of public instruction, indicating that the child's needs for special education are being appropriately addressed by persons qualified to provide special education or related services. If such a plan is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03.

3. Any certified teacher monitoring home-based instruction shall spend a minimum average of one hour per week in contact with the first student and in conjunction with the parent. With two or more children under supervision, the teacher shall monitor a minimum additional one-half hour per month for each child under the teacher's supervision who is receiving home-based instruction. The time may be reduced proportionately if the child is in attendance in a public school or an approved private school. The teacher shall evaluate the student's progress and report the student's progress at least twice annually to the local public school superintendent. If the school district does not employ a local school superintendent, the report must be filed with the county superintendent of schools for the county of the child's residence.
4. If the local superintendent of public schools or the county superintendent of schools in those school districts that do not employ a local superintendent determines that the child is not making reasonable academic progress consistent with the child's age or stage of development, the parent of the child must be notified of the conclusion reached and the basis for the conclusion. Upon receipt of that notice, the parent shall make a good faith effort to remedy any deficiency. The appropriate official shall report the failure on the part of a parent to make a good faith effort to the state's attorney pursuant to section 15-34.1-04 as a violation of this chapter. The superintendent of public instruction shall adopt rules to assist local superintendents of schools, county superintendents of schools, and the licensed professionals referred to in subsection 2, in determining whether a child is making reasonable academic progress.

Approved April 11, 1995  
Filed April 12, 1995



**CHAPTER 189****SENATE BILL NO. 2187**

(Education Committee)

(At the request of the Office of Management and Budget)

**EDUCATION STANDARDS AND PRACTICES BOARD  
ADMINISTRATION**

AN ACT to amend and reenact section 15-36-08 of the North Dakota Century Code, as amended by section 4 of chapter 171 of the 1993 Session Laws, and section 15-38-17 of the North Dakota Century Code, relating to fees and expenses of the education standards and practices board; to provide for temporary fiscal management of the education standards and practices board by the superintendent of public instruction; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-36-08 of the North Dakota Century Code, as amended by section 4 of chapter 171 of the 1993 Session Laws, is amended and reenacted as follows:

**15-36-08. Fees for certificates.** The education standards and practices board shall determine a fee for each certificate issued by this state, and no certificate shall be issued for a period of less than one school year. The fees shall be deposited in the state treasury to the credit of the general fund of the state and disbursed in accordance with section 54-44-12.

**SECTION 2. AMENDMENT.** Section 15-38-17 of the North Dakota Century Code is amended and reenacted as follows:

**15-38-17. Education standards and practices board and administrator's professional practices board.** The education standards and practices board consists of nine members. The governor shall appoint four classroom teachers from public schools, one classroom teacher from a private school, one school board member, two school administrators, and one dean of a college of education. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member. The administrator's professional practices board consists of five members from the education standards and practices board. The administrator's professional practices board includes the two school administrators who are members of the education standards and practices board, the one school board member who is a member of the education standards and practices board, and two teacher members who are members of and are selected by the education standards and practices board. The term of office of members of the education standards and practices board and the administrator's professional practices board shall be three years commencing on January first of the year of the appointment. Vacancies shall be filled for an unexpired term in the same manner as original appointments. No person may serve for more than two consecutive terms as a member of either board. Members of the current teachers' professional practices commission may serve out their remaining terms.

The education standards and practices board and the administrator's professional practices board shall each annually select a chairman and vice

chairman, and the executive director of the education standards and practices board or the executive director's designee shall serve as secretary. Meetings of either board must be held after ten days' notice to all members at the call of the chairman or upon request in writing of a majority of either board. A majority shall constitute a quorum and a majority of the quorum shall have authority to act upon any matter properly before either board. Each board shall adopt its own rules of order and procedure not inconsistent with sections 15-38-16 through 15-38-19 and shall hold meetings pursuant to the provisions of sections 15-38-16 through 15-38-19.

The members of each board shall receive twenty-five dollars for each day actually engaged in the service of the appropriate board and shall be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. No member of either board shall lose the member's regular salary or the above compensation while serving on official business of the appropriate board. ~~The office of management and budget shall approve proper vouchers for expenses.~~

**SECTION 3. INTENT - DEPARTMENT OF PUBLIC INSTRUCTION TEMPORARY FISCAL MANAGEMENT OF EDUCATION STANDARDS AND PRACTICES BOARD.** Notwithstanding any other provision of law, during the biennium beginning July 1, 1995, and ending June 30, 1997, the superintendent of public instruction shall supervise the fiscal management of all funds appropriated to the education standards and practices board or to the superintendent of public instruction for the purposes of education standards and practices board functions. Notwithstanding section 1 of this Act, during the biennium beginning July 1, 1995, and ending June 30, 1997, certificate fees and other charges made and received by the education standards and practices board must be deposited in the department of public instruction operating fund. On July 1, 1997, any unexpended balance of funds in the department of public instruction operating fund attributable to certificate fees and other charges of the education standards and practices board must be calculated and transferred by the superintendent of public instruction to the education standards and practices board for deposit according to section 54-44-12.

**SECTION 4. EFFECTIVE DATE.** This Act becomes effective on July 1, 1995.

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

Approved March 29, 1995  
Filed March 29, 1995

**CHAPTER 190****HOUSE BILL NO. 1036**

(Legislative Council)  
(Interim Education Finance Committee)  
(Senator C. Nelson)

**TEACHER CITIZENSHIP REQUIREMENT REPEALED**

AN ACT to amend and reenact section 15-36-11 of the North Dakota Century Code, relating to teacher certification; to repeal section 15-36-07 of the North Dakota Century Code, relating to citizenship requirements for teacher certification; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 15-36-11 of the North Dakota Century Code, as amended by section 6 of chapter 171 of the 1993 Session Laws, is amended and reenacted as follows:

15-36-11. Certificate required. ~~No A person who is not the holder of must hold a valid North Dakota teacher's certificate may in order to be permitted or employed to teach in any of the public schools of the school in this state; except that teachers unable to be certificated because they are not citizens of the United States or because they have not declared their intention to become citizens of the United States, but are otherwise qualified to teach in North Dakota, may be employed on a temporary basis if they are approved annually by the education standards and practices board. The employment of teachers in accordance with this section may not cause any foundation aid payments to be withheld from the school districts by whom they are employed.~~

**SECTION 2. REPEAL.** Section 15-36-07 of the North Dakota Century Code is repealed.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on July 1, 1997.

Approved March 31, 1995  
Filed March 31, 1995

**CHAPTER 191****SENATE BILL NO. 2170**

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

**TFFR TECHNICAL CHANGES**

AN ACT to amend and reenact subsections 9 and 11 of section 15-39.1-04, sections 15-39.1-06, 15-39.1-10, 15-39.1-18, 15-39.1-20, and 15-39.1-24 of the North Dakota Century Code, relating to definitions, organization of the board, distribution of benefits, disability retirement, withdrawal from the fund, and the purchase of additional credit under the teachers' fund for retirement.

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

<sup>93</sup> **SECTION 1. AMENDMENT.** Subsections 9 and 11 of section 15-39.1-04 of the North Dakota Century Code are amended and reenacted as follows:

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" with respect to a member who begins participation in the plan under former chapter 15-39 or chapter 15-39.1 or 15-39.2 after June 30, 1996, may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B), as amended by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66; 107 Stat. 312]. The annual compensation limit is one hundred fifty thousand dollars, as adjusted by the commissioner of the internal revenue service for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B). "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, referee pay, busdriver pay, janitorial pay, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer entered into within sixty months before retirement.
11. "Teacher" includes:
  - a. All persons who are certified to teach in this state who are contractually employed in teaching in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers

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<sup>93</sup> Section 15-39.1-04 was also amended by section 5 of Senate Bill No. 2491, chapter 186; section 10 of Senate Bill No. 2012, chapter 34; and section 25 of House Bill No. 1027, chapter 120.

employed in any state institution or in the school system of any school district in this state; ~~except that the superintendent and assistant superintendent of the developmental center at Grafton may be brought within this definition at their option.~~

- b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, ~~developmental center at Grafton supervisors and inspectors,~~ the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
- c. The executive director ~~of the North Dakota school boards association, the executive secretary of the fund, the executive director~~ and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and certified staff of teachers centers, but only if the person was previously a member of and has credits in the fund.
- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

**SECTION 2. AMENDMENT.** Section 15-39.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-06. Organization of board.** The board may hold meetings as necessary for the transaction of business and a meeting may be called by the president or any two members of the board upon reasonable notice to the other members of the board. The president for the ensuing year must be elected at the first meeting following July first of each year. ~~Except for disbursing money for the payment of claims and actuarial consultant and auditor fees, the board shall expend money for administrative purposes, as limited by the appropriation first made by the legislative assembly, by preparing an appropriate voucher and submitting the voucher to the office of management and budget.~~

**SECTION 3. AMENDMENT.** Section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-10. Eligibility for benefits.**

1. The following members are eligible to receive monthly lifetime retirement benefits under this section:
  - a. All members who have completed five years of teaching credit and who have attained the age of sixty-five years.
  - b. All members who have completed five years of teaching credit and who have a combined total of years of service credit and years of age which equals eighty-five.
2. The amount of retirement benefits is one and fifty-five hundredths percent of the final average monthly salary of the member multiplied by

the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

3. Notwithstanding any other provision of this section, no member who retired on July 1, 1993, or after and is eligible to receive benefits under former chapter 15-39, chapter 15-39.1, or section 15-39.2-02, may receive benefits which are less than:
  - a. Ten dollars per month per year of teaching to twenty-five years.
  - b. Fifteen dollars per month per year of teaching over twenty-five years.
4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later.

**SECTION 4. AMENDMENT.** Section 15-39.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-18. Disability retirements.**

1. Any member may also retire and receive a disability annuity if, after a period of at least one year of service as a member in this state, the member suffers from total disability as determined by the board.
2. The amount of the disability annuity is the greater of the amount computed by the retirement formula in section 15-39.1-10 without consideration of age or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service. A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16.
3. The disability annuity continues until the death or prior recovery of the disabled annuitant. The board shall ascertain by periodic medical examinations the continued disability status of a disabled annuitant.
4. If a disabled annuitant recovers and returns to active teaching, that annuitant is entitled to the retirement benefit credits which the annuitant earned prior to the time of disablement, and the credits which the annuitant earned after returning to active teaching must be added to those earned prior to disablement.
5. ~~If the member elected a disability annuity under an option allowed under section 15-39.1-16, then subsequent retirement benefits must also be under that option.~~

**SECTION 5. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter. The accumulated assessments of a member who ceases to be eligible to participate in the fund before accumulating five years of service credit must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned during the month of January next following the date of termination. The automatic refund must be waived provided the member presents the board with a statement of intent to return to teach in North Dakota within thirty-six months after eligibility to participate in the fund ceases. The board may waive the automatic refund for members who present to the board a statement of intent to return to teach in North Dakota within a period exceeding thirty-six months after eligibility to participate in the fund ceases. For distributions made after January 1, 1993, notwithstanding any provision of the plan to the contrary that would otherwise limit a member's refund election under this chapter, a member may elect, at the time and under rules established by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member.

**SECTION 6. AMENDMENT.** Section 15-39.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-24. Purchase of additional credit.** Prior to retirement a teacher may purchase additional credit for use toward retirement in the following instances and manner:

1. Any teacher may purchase service credit for years of teaching service at an out-of-state school or educational institution supported by public taxation out of North Dakota. However, a teacher must complete five years of creditable service in this state before the teacher is eligible to purchase the first five years of service credit for out-of-state teaching under this subsection. The teacher may purchase any part of the remaining years of service credit for out-of-state teaching with each year of service credit conditional upon the teacher completing one additional year of creditable service in this state following the out-of-state teaching. The years of out-of-state teaching service do not qualify for credit in this state if the years claimed also qualify for retirement benefits from an out-of-state retirement system.
2. Any teacher who has received an honorable discharge from military service of the United States of America may receive credit for no more than four years of active service, upon filing application and proof with the board and subject to the terms of this chapter upon teaching one year in North Dakota subsequent to military service. Members qualified to receive military credit under the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.] shall only pay member assessments plus interest pursuant to rules adopted by the board. For those individuals becoming eligible to receive military credit under the Veterans' Reemployment Rights Act after June 30, 1991, the employer shall pay the required employer contribution for military service.

3. A teacher who attends a college, university, or other recognized school for two consecutive semesters or three consecutive quarters, other than summer sessions, for the purpose of improving the teacher's qualifications in the teaching profession is entitled to have such periods while in attendance at that college, university, or school credited, not to exceed three years of teaching service, under this chapter. To be eligible for purchasing credit under this subsection, the teacher must have taught at least one full school year in North Dakota immediately preceding entrance into the college, university, or school, or, immediately following such training, the teacher must have taught not less than one full school year in a public school or state institution of this state.
4. A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. Service credit for a legislative session must be purchased within one year after the adjournment of that legislative session. As an alternative to a teacher purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement by which payment for service credit for time spent during each legislative session by the teacher serving as a member of the legislative assembly is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary without reduction for a leave of absence taken by the teacher during the legislative session.
5. A teacher may purchase credit for service as an administrator or teacher in the field of education if employed by an agency of the United States government teaching school age children. The maximum service that may be purchased under this subsection is ten years.
6. An active teacher who is elected president of a professional educational organization recognized by the board and who serves in a full-time capacity in lieu of teaching may purchase service credit for the time spent serving as president. The service credit must be purchased within one year after the teacher leaves the position. As an alternative to purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement under which payment for service credit for the time spent as president of the professional educational organization is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary as president.
7. Except as provided in subsections 2 ~~and~~, 4, and 6, the amount of additional service eligible to be purchased under this section must be credited to the teacher when the teacher has made the required payment. In all cases, the purchase cost must be on an actuarial equivalent basis.

Approved March 15, 1995  
Filed March 15, 1995



## CHAPTER 192

## SENATE BILL NO. 2054

(Legislative Council)  
(Interim Education Finance Committee)  
(Senators Yockim, C. Nelson, Kelsh)  
(Representative Kaldor)

## SCHOOL DISTRICT PAYMENT DISTRIBUTION

AN ACT to amend and reenact section 15-40.1-05 of the North Dakota Century Code, relating to the distribution of payments to school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-05 of the North Dakota Century Code is amended and reenacted as follows:

15-40.1-05. Distribution of payments to school districts - Duty of office of management and budget. The superintendent of public instruction shall certify to the office of management and budget a list of all school districts in the state, together with a statement of ~~payments equal to thirty percent of the total payments made to each respective school district during the previous fiscal year; and the~~ The office of management and budget shall pay each school district ~~half~~ ten percent of the amount certified, within the limits of legislative appropriation, on or before July fifteenth, August first, September first, and the other half on October first of each year. The superintendent of public instruction shall determine what amounts in addition to ~~the September first and October first~~ those payments are necessary to constitute ~~forty percent the remainder~~ of the payments due to each school district for the current school year, and shall certify to the office of management and budget a list of all school districts in the state, together with a statement of the payments due them. On or before November first, the office of management and budget shall pay to each school district, within limits of legislative appropriation, the amounts needed in addition to the ~~above payments of September first and October first in order to constitute forty~~ fifty percent of the sum found to be due under the ~~provisions of this chapter. On or before the first day of December, January, February, March, and April, and May,~~ provisions of this chapter. On or before the first day of December, January, February, March, and April, and May, payments equal to ~~ten percent~~ one-fifth of the total remaining payments must be made to each respective school district. If funds appropriated for distribution to school districts for per ~~pupil~~ student and transportation aid become available after ~~May~~ April first, the superintendent shall distribute the payments no later than June thirtieth.

Approved March 21, 1995

Filed March 23, 1995

**CHAPTER 193****SENATE BILL NO. 2519**

(Senators Freborg, G. Nelson)

**PER STUDENT PAYMENTS AND EQUALIZATION  
FACTORS**

AN ACT to create and enact three new sections to chapter 15-40.1 of the North Dakota Century Code, relating to additional payments for small but necessary schools, supplemental payments, and increased weighting factors for students attending school out of state; to amend and reenact sections 15-40.1-06, 15-40.1-07, 15-40.1-08, 15-40.1-09, and 57-15-14 of the North Dakota Century Code, relating to per student payments and the school district equalization factor, high school weighting factors, elementary weighting factors, the computation of foundation aid, and tax levy limitations in school districts; and to provide for a legislative council study.

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

**SECTION 1.** A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Per student payments for small but necessary schools. Per student payments made in accordance with sections 15-40.1-07 and 15-40.1-08 must be adjusted as follows:

1. For each elementary school that has less than fifty students and in which fifteen percent or more of the elementary students enrolled would have to travel beyond a fifteen-mile [24.15-kilometer] radius from their residences in order to attend another school, the weighting factor provided under section 15-40.1-08 must be increased by twenty percent for the first fifteen students. If the school has fewer than fifteen students, the payment received must be for fifteen students.
2. For each high school that has less than thirty-five students and in which fifteen percent or more of the high school students enrolled would have to travel beyond a twenty-mile [32.2-kilometer] radius from their residences in order to attend another school, the weighting factor provided under section 15-40.1-07 must be increased by twenty percent for the first twenty students. If the school has fewer than twenty students, the payment received must be for twenty students.

**SECTION 2.** A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Per student payments for students attending school out of state. For each student attending school out of state in accordance with section 15-40.2-09, the weighting factors provided in sections 15-40.1-07 and 15-40.1-08 must be increased by twenty percent.

<sup>94</sup> SECTION 3. AMENDMENT. Section 15-40.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-06. Declaration of legislative intent - Educational support per student - School district equalization factor - Limitations.**

1. It is the intent of the legislative assembly, not considering any separate and supplemental payments as may be provided by law, to support elementary and secondary education in this state from state funds based on the educational cost per student. In determining the educational cost per student, the following criteria may not be used:
  - a. Expenditures for capital outlay for buildings and sites, or debt service.
  - b. Expenditures from school activities and school lunch programs.
  - c. Expenditures for the cost of transportation, including the cost of schoolbuses.
2.
  - a. The educational support per student during the first year of the ~~1993-95~~ 1995-97 biennium must be one thousand ~~five~~ seven hundred ~~seventy~~ fifty-seven dollars and for the second year of the biennium the educational support per student must be one thousand ~~six~~ eight hundred ~~thirty-six~~ sixty-two dollars and is the basis for calculating grants-in-aid on a per student basis as provided in sections 15-40.1-07 and 15-40.1-08.
  - b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 must be supported in the amount of two hundred twenty dollars, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07.
  - c. School districts operating high schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1991, or that become unaccredited in any succeeding school year must be supported for the 1991-92 school year or for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07, but those school districts are not entitled to the amounts resulting from applying the factors in that section. The amount of aid a school district is entitled to under this subsection for each high school that is not accredited must be reduced by two hundred dollars times the number of students in the school for the second school year that the high school is unaccredited, and an additional two hundred dollars per student in the unaccredited school for each

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<sup>94</sup> Section 15-40.1-06 was also amended by section 2 of Senate Bill No. 2063, chapter 194.

additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-07 for the entire school year in which the school becomes accredited.

- d. School districts operating elementary schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1992, or that become unaccredited in any succeeding school year must be supported for the 1992-93 school year or for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-08, except that the amount of aid that a school district is entitled to under this subsection for each elementary school that is unaccredited must be reduced by two hundred dollars times the number of students in the school each year that the elementary school is unaccredited. Any elementary school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-08 for the entire school year in which the school becomes accredited.
3. In determining the amount of payments due school districts for tuition apportionment provided in section 15-44-03, and per student and transportation aid under this section, the amount of tuition apportionment, per student aid, and transportation aid for which a school district is eligible must be added together, and from that total, the following amounts must be subtracted:
  - a. The product of ~~twenty-three~~ twenty-eight mills for the ~~1993-94~~ 1995-96 school year and ~~twenty-four~~ thirty-two mills for ~~each year thereafter~~ the 1996-97 school year times the latest available net assessed and equalized valuation of property of the school district. For succeeding school years, the number of mills to be used in the computation must be determined as follows:
    - (1) The superintendent of public instruction shall determine the percentage resulting from dividing the number of mills used in the computation the previous year by the state average school district general fund mill levy.
    - (2) The superintendent of public instruction shall determine the amount of foundation aid estimated to be distributed during the current year and subtract from that the amount of foundation aid that was distributed during the prior year, and divide the result by the amount of foundation aid distributed during the prior year.
    - (3) The superintendent of public instruction shall multiply the quotient determined under paragraph 2 by forty percent and shall add this product to the percentage obtained in paragraph 1. This sum shall be multiplied times the state average school district general fund mill levy to determine the number of mills to be used in the computation provided in subdivision a. However, the number of mills used may not

fall below thirty-two mills, nor rise above twenty-five percent of the state average school district general fund mill levy.

- b. The amount that the unobligated general fund balance of a school district on the preceding June thirtieth is in excess of three-fourths of the actual expenditures, plus an additional twenty thousand dollars.
4. No school district may receive foundation payments beyond the October payment unless the following reports have been filed with the superintendent of public instruction:
  - a. Annual average daily membership report.
  - b. Annual school district financial report.
  - c. The September tenth fall enrollment report.
  - d. The personnel report forms for certified and noncertified employees.
5. No school district may receive the January foundation payment unless the taxable valuation and mill levy certifications are on file with the department of public instruction by December fifteenth.

**SECTION 4. AMENDMENT.** Section 15-40.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-07. High school per student payments - Amount - Proportionate payments.** Payments must be made each year from state funds to each school district operating a high school and to each school district contracting to educate high school students in a federal school, subject to adjustment as provided in section 15-40.1-09, as follows:

1. For each high school district having under seventy-five students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.625 adjusted by ~~twenty-five~~ fifty percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student as provided in section 15-40.1-06. Beginning July 1, ~~1994~~ 1996, the factor is 1.625 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
2. For each high school district having seventy-five or more, but less than one hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.335 adjusted by ~~twenty-five~~ fifty percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06.

Beginning July 1, ~~1994~~ 1996, the factor is 1.335 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

3. For each high school district having one hundred fifty or more, but less than five hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.24 adjusted by ~~twenty-five~~ fifty percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1994~~ 1996, the factor is 1.24 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
4. For each high school district having a total high school enrollment of five hundred fifty or more students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.14 adjusted by ~~twenty-five~~ fifty percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1994~~ 1996, the factor is 1.14 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
5. For high schools having an approved alternative education program, the amount of money resulting from multiplying the factor in:
  - a. Subsection 1 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has less than seventy-five students in average daily membership.
  - b. Subsection 2 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has seventy-five or more, but less than one hundred fifty students in average daily membership.
  - c. Subsection 3 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has one hundred fifty or more, but less than five hundred fifty students in average daily membership.
  - d. Subsection 4 times the number of students registered in the alternative education program times the educational support per

student as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more students in average daily membership.

Every high school district must receive at least as much in total payments as it would have received if it had the highest number of students in the next lower category. Payments may not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district must be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments must be made to the public school district in which the student is enrolled for specific courses. School districts offering high school summer school programs are eligible for proportionate payments provided each course offered satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding eligibility for school districts to receive proportionate payments for summer education programs. The proportionate payment made under this section during the biennium for high school summer school programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for foundation aid and transportation aid during the biennium.

**SECTION 5. AMENDMENT.** Section 15-40.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-08. Elementary per student payments - Amount.** Payments must be made from state funds to each school district operating an elementary school and to each school district contracting to educate elementary students in a federal school, employing teachers holding valid certificates or permits in accordance with section 15-47-46 and chapter 15-36, adjusted as provided in section 15-40.1-09, as follows:

1. For each one-room rural school, the amount of money resulting from multiplying the factor 1.28 adjusted by ~~twenty-five~~ fifty percent of the difference between 1.28 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through eight in average daily membership, up to a maximum of sixteen students, times the educational support per student provided in section 15-40.1-06. There must be paid .9 times each additional student in its school in grades one through eight in average daily membership times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than twenty students in average daily membership. If the one-room rural school is located in a school district with another elementary school, the weighting factor for the students in grades one through six must be based on the average daily membership in the district in grades one through six as provided in subsections 2 through 4. If the one-room rural school is located in a school district with another school that has students in grade seven or eight, the weighting factor for the students in grade seven or

- eight must be the same as that provided for in subsection 5. Beginning July 1, ~~1994~~ 1996, the factor is 1.28 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.28 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
2. For each elementary school in school districts having under one hundred students in average daily membership in grades one through six, the amount of money resulting from multiplying the factor 1.09 adjusted by ~~twenty-five~~ fifty percent of the difference between 1.09 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher, ~~up to a maximum of twenty students per classroom or per teacher~~, times the educational support per student provided in section 15-40.1-06. ~~There must be paid 9 times each additional student in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06,~~ except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1994~~ 1996, the factor is 1.09 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.09 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
  3. For each elementary school in school districts having one hundred or more students in average daily membership in grades one through six, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary students in grades one through six, the amount of money resulting from multiplying the factor .905 adjusted by ~~twenty-five~~ fifty percent of the difference between .905 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1994~~ 1996, the factor is .905 adjusted by ~~fifty~~ sixty-five percent of the difference between .905 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
  4. For each elementary school in school districts having an average daily membership of one thousand or more elementary students in grades one through six, the amount of money resulting from multiplying the factor .95 adjusted by ~~twenty-five~~ fifty percent of the difference between .95 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1994~~ 1996, the factor is .95 adjusted by ~~fifty~~



sixty-five percent of the difference between .95 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction. ~~Beginning July 1, 1995, the factor is .95 adjusted by seventy-five percent of the difference between .95 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction. Beginning July 1, 1996, the superintendent of public instruction shall establish the factor that reflects the five-year average cost of education per student for this category.~~

5. For each of the above classes of elementary schools, except for one-room rural schools that are not located in a district with another school having students in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor 1.01 adjusted by twenty-five fifty percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades seven and eight in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. ~~Beginning July 1, 1994~~ 1996, the factor is 1.01 adjusted by fifty sixty-five percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
6. For each elementary school having students under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, the amount of money resulting from multiplying the factor 1.01 adjusted by twenty-five fifty percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of special education students in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06. ~~Beginning July 1, 1994~~ 1996, the factor is 1.01 adjusted by fifty sixty-five percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, the amount of money resulting from multiplying the factor .50 adjusted by twenty-five fifty percent of the difference between .50 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in average daily membership in each classroom or for each teacher times the educational support per student, as provided under section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. The full per student payment may be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the

same time period must receive a proportionately smaller per student payment. Beginning July 1, ~~1994~~ 1996, the factor is .50 adjusted by ~~fifty~~ sixty-five percent of the difference between .50 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

The superintendent of public instruction shall make proportionate payments to each public school district educating students who are also enrolled in nonpublic schools.

Every school district must receive at least as much in total payments for elementary students as it would have received if it had the highest number of students in the next lower category.

**SECTION 6.** A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Supplemental payment to high school districts.

1. The superintendent of public instruction shall calculate the average valuation of property per student by dividing the number of students in average daily membership in grades one through twelve in a high school district into the district's latest available net assessed and equalized taxable valuation of property. If the quotient is less than the latest available statewide average taxable valuation per student and if the district's educational cost per student is below the most recent available statewide average cost of education per student, the superintendent of public instruction shall:
  - a. Determine the difference between the latest available statewide average taxable valuation per student and the average valuation per student in the high school district;
  - b. Multiply the result determined under subsection 1 by the number of students in average daily membership in grades one through twelve in the high school district;
  - c. Multiply the result determined under subsection 2 by the number of general fund mills levied by the district in excess of one hundred thirty-five, provided that any mills levied by the district which are in excess of two hundred may not be used in this calculation; and
  - d. Multiply the result determined at under subsection 3 by twenty-five percent. The result is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under chapter 15-40.1.
2. The supplemental payment contained in subsection 1 is effective through June 30, 1997. If such a plan is to be continued after June 30, 1997, it must be reviewed by an interim committee under the direction of the legislative council. The legislative council shall report its findings and recommendations, including whether or not the plan should be continued and if continued, whether or not the plan should be modified, together with any legislation required to implement the recommendations, to the fifty-fifth legislative assembly.

**SECTION 7. AMENDMENT.** Section 15-40.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-09. Application for payments - Verification and determination of payments for high school students - Report of county superintendent of schools - Appeal.** Immediately upon the completion of the registration of students at the beginning of each school term and in no event later than September tenth of each year, the business manager of each school district within or without this state which is claiming payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a claim on a form prescribed by the superintendent of public instruction stating the number of students registered in high school and elementary grades for which payments are claimed, and such other information as may be reasonably requested by the superintendent of public instruction. Not later than December first, the superintendent of public instruction shall certify to the office of management and budget a list of the school districts and schools not operated by school districts entitled to payments from state funds, together with the amounts to which the several districts and schools are entitled. Per student aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership less the number of students attending school during the current school year in another district under the provisions of open enrollment or the current year's fall enrollment, whichever is greater provides the greatest payment, for all current grade levels. Adjustments must be made in the subsequent year according to a comparison between the average daily membership for the year for which the adjusted payment is being made and the year preceding the year for which the adjusted payment is being made, whichever is greater, for grade levels that existed in both years. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's foundation aid payments. For purposes of this chapter, "average daily membership" shall mean the total days all students in a given school are in attendance, including days set aside for the North Dakota education association convention, plus any three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after consultation with the teachers, the total days all students are absent, and the two parent-teacher conference days authorized in section 15-47-33, divided by one hundred eighty days. School districts educating children of agricultural migratory workers or offering high school summer school programs during the months of June, July, and August shall not be restricted to payments for a one hundred eighty-day school term.

Immediately upon the termination of the school term and in no event later than July fifteenth of each year, the business manager of each school district within or without this state which has received payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a verified statement of the name, residence, and membership of elementary and high school students as provided for in this section, and number of units of high school work taken by each high school student enrolled during the previous school year. The statement shall be attested to by the county superintendent of schools. The county superintendent shall investigate the validity of the statement and shall determine the residence and other qualifications of each student named in the statement. The county superintendent shall certify to the superintendent of public instruction on or before September first of each year the number of enrolled students in each district in the county for the previous school year upon which any adjustment may be based as provided in this section. If any statement is disallowed in whole or in part, notice of the disallowance and the names of students who are disallowed shall be reported to the superintendent of public instruction and to the district filing the statement. Any district may appeal to the superintendent of public

instruction from the determination of the county superintendent of schools on or before September fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

**SECTION 8. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14. Tax levy limitations in school districts.** The aggregate amount levied each year for the purposes listed in section 57-15-14.2 by any school district, except the Fargo school district, may not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of one hundred ~~eighty~~ eighty-five mills on the dollar of the taxable valuation of the district, except that:

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
  - a. There may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved by a majority of the qualified electors voting upon the question at any regular or special school district election.
  - b. There is no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the qualified electors voting at any regular or special election upon such question.
2. In any school district having a total population of less than four thousand, there may be levied any specific number of mills that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.
3. In any school district in which the total assessed valuation of property has increased twenty percent or more over the prior year and in which as a result of that increase the school district is entitled to less in state foundation aid payments provided in sections 15-40.1-06 through 15-40.1-08 because of the deduction required in subsection 3 of section 15-40.1-06, there may be levied any specific number of mills more in dollars than was levied in the prior year up to a general fund levy of one hundred ~~eighty~~ eighty-five mills on the dollar of the taxable valuation of the school district. The additional levy authorized by this subsection may be levied for not more than two years because of any twenty percent or greater annual increase in assessed valuation. The total amount of revenue generated in excess of the eighteen percent increase which is otherwise permitted by this section may not exceed the amount of state aid payments lost as a result of applying the deduction provided in subsection 3 of section 15-40.1-06 to the increased assessed valuation of the school district in a one-year period.

The question of authorizing or discontinuing such specific number of mills authority or unlimited taxing authority in any school district must be submitted to the qualified electors at the next regular election upon resolution of the school board or upon the

filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, unless such census is greater than four thousand in which case only fifteen percent of the number of persons enumerated in the school census is required. However, not fewer than twenty-five signatures are required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district must be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority does not affect the tax levy in the calendar year in which the election is held. The election must be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

**SECTION 9. LEGISLATIVE COUNCIL STUDY OF EDUCATION FINANCE.** The legislative council shall appoint a committee to study the financing of elementary and secondary schools and the availability of state support for school construction. The legislative council shall ensure that the committee contains a balanced representation. During the 1995-96 interim, the committee shall review the formulas used to equalize state aid including formulas for student transportation and special education, funding sources that would be alternatives to property tax, and any other issues related to the financing of elementary and secondary schools. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-fifth legislative assembly.

Approved April 18, 1995

Filed April 18, 1995

## CHAPTER 194

### SENATE BILL NO. 2063

(Legislative Council)

(Interim Education Services Committee)

(Senators Scherber, St. Aubyn)

(Representatives Oban, Holm, Aarsvold)

### PER STUDENT SPECIAL EDUCATION PAYMENTS

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to per student payments for special education; to amend and reenact subsection 3 of section 15-40.1-06, subsection 6 of section 15-40.2-08, sections 15-59-02.1, 15-59-06, and 15-59-07 of the North Dakota Century Code, relating to school district liability for special needs students; to provide legislative intent; and to provide for a legislative council study.

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

**SECTION 1.** A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Per student payments - Special education. Each biennium, the superintendent of public instruction shall distribute moneys appropriated by the legislative assembly for per student special education payments to each school district in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under subsection 3 of section 15-40.1-06, to eligible school districts in the same manner and at the same time that the superintendent distributes foundation aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with nonsupplanting and maintenance of effort provisions under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.

<sup>95</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 15-40.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. In determining the amount of payments due school districts for per student ~~and transportation~~ aid under this section, the amount of ~~per student foundation aid, special education aid,~~ and transportation aid for which a school district is eligible must be added together, and from that total, the following amounts must be subtracted:
  - a. The product of twenty-three mills for the 1993-94 school year and twenty-four mills for each year thereafter times the latest available net assessed and equalized valuation of property of the school district.

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<sup>95</sup> Section 15-40.1-06 was also amended by section 3 of Senate Bill No. 2519, chapter 193.

- b. The amount that the unobligated general fund balance of a school district on the preceding June thirtieth is in excess of three-fourths of the actual expenditures, plus an additional twenty thousand dollars.

<sup>96</sup> **SECTION 3. AMENDMENT.** Subsection 6 of section 15-40.2-08 of the North Dakota Century Code is amended and reenacted as follows:

6. An amount equal to the state average ~~per pupil~~ per student elementary or high school costs, depending on the educational level of the student, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual ~~per pupil~~ per student cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state from funds appropriated for special education in the case of a student with disabilities, or from funds appropriated for foundation aid in all other cases within the limits of legislative appropriations.

<sup>97</sup> **SECTION 4. AMENDMENT.** Section 15-59-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-59-02.1. Legislative intent - Special education.** This statement of legislative intent is provided to define more clearly the relationship between the state, school districts, and parents of ~~children~~ students with disabilities in the provision of special education and related services. "Related services" means transportation and such developmental and corrective or supportive services required to assist a ~~child~~ student with disabilities to benefit from special education.

The school administrator or the administrator's appointed representative or director of special education other than the ~~child's~~ student's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the student with disabilities, and make recommendations for required special education and related services.

The legislative assembly believes that in order to assure equality of services which are provided for by limited state funds, the department of public instruction will be required to approve a contract for services based on an individualized education program developed for each student with disabilities placed in a private school program or in programs outside the student's original special education unit.

~~The legislative assembly believes that when money is distributed to a school district for special education personnel, the department of public instruction should give consideration to the units of services provided by the district, the district's special education program costs, and the district's special education program needs.~~

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<sup>96</sup> Section 15-40.2-08 was also amended by section 6 of Senate Bill No. 2159, chapter 173.

<sup>97</sup> Section 15-59-02.1 was also amended by section 1 of House Bill No. 1047, chapter 202, and section 2 of House Bill No. 1058, chapter 243.

The legislative assembly recognizes that a student with disabilities whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the disability. All summer programs attended by these students must have approval of the department of public instruction before receiving foundation aid or state special education reimbursement.

In the case of students with disabilities who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, including boarding care, be borne by state special education funds and school district funds.

"All children students with disabilities have the right to a free appropriate education" means that all students with disabilities have the right to special education and related services which must be provided at no cost to parents. "At no cost" means specifically designed instruction provided without charge but does not preclude expenses normally incurred or charged to parents of children students who are nondisabled. Parents will assume such costs for a child student with disabilities as they would if the child student was nondisabled. Personal items, including hearing aids, eyeglasses, routine medical expenses, physical exams, medications, and all items necessary for a child student who is nondisabled, will be the financial responsibility of the parent.

School districts must require use of family insurance, or similar third-party payments, in whatever amount is allowed, as long as there is no financial loss to the child student or the child's student's parent, for determining a child's student's medically related disability or other required related services which results in the child's student's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a student with disabilities resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the department of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by the parent of a child student with disabilities or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the department of human services has authority under chapter 25-16 to provide early intervention services to meet the needs of children with disabilities ages



zero through two years, the legislative assembly recognizes this provision and requires the department of public instruction, the state department of health and consolidated laboratories, and the department of human services to cooperate in planning and coordinating programs for these children.

**SECTION 5. AMENDMENT.** Section 15-59-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-59-06. State cooperation in special education.** ~~Children~~ Students with disabilities who are enrolled in approved programs of receiving special education services must be deemed to be regularly enrolled in the school district of residence and must be included in the determination of elementary and high school per-pupil payments from the state foundation aid program whether or not such pupils are the students regularly attending school in the school or school district receiving such the payments. A prorated state foundation aid payment for a student to attend a public school program for students with disabilities, approved by the superintendent of public instruction, may be made provided that if the individualized education program for the child student is written during the last quarter of the school term and specifically requires that the child student attend a summer special education program. In the case of a student who is enrolled in a nonpublic school but who is attending attends a public school special education program, payments must be made to the appropriate public school district in relation to for the proportion portion of a normal schoolday as such the student participates in such special education program. For the purposes of this section, a normal schoolday must be deemed to consist consists of six hours. Upon the determination by the director of special education that the school district has made expenditures for each child with a disability or child who is gifted in such program equal to the average expenditures made in such district for elementary or high school students, as the case may be, the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district. The amount the school district is required to expend must be reduced proportionately if a child student attends the school for less than an entire year. If any school district within a special education unit has any elementary or high school a student with disabilities who, in the opinion of a qualified psychologist, a medical doctor, district superintendent, and the district or multidistrict director of special education the student's multidisciplinary team, is unable to attend the public schools in the special education unit because of a disability, such the school district shall contract with an in-state public school located outside the special education unit in which the student is a legal resident which, if the school will accept such the student and has proper facilities services for the student's education. No school district may enter into a contract with any in-state public school for the education of any student because of a disability, unless the curriculum services provided by such the school and the contract has have been approved in advance by the superintendent of public instruction. The contract must provide that such the school district agrees to pay to the in-state public school as part of the cost of educating such the student an amount for the school year equal to two and one-half times the state average per-pupil per student elementary or high school cost, depending on whether upon the student's level of enrollment would be in a grade or high school department; provided, that such. The payment may not exceed the actual per-pupil per student cost incurred by such the in-state public school. The school district's liability must be reduced proportionately if the student attends the in-state public school for less than an entire year. The superintendent of public instruction, upon notification by the admitting district and upon verification by the superintendent that tuition payments are due the admitting district and are unpaid, shall withhold all payments from the state for foundation aid to the district of residence until the tuition due has been paid. The transportation must be furnished as provided by rules of the department

superintendent of public instruction. The remainder of the actual cost of educating the student with disabilities not covered by other payments or credits must be paid from funds provided by the within the limits of legislative assembly appropriations for such that purpose.

**SECTION 6. AMENDMENT.** Section 15-59-07 of the North Dakota Century Code is amended and reenacted as follows:

**15-59-07.** Contracts for children students with disabilities to attend private or out-of-state public schools. If any school district in this state has any elementary or high school a student with disabilities who in the opinion of a qualified psychologist, a medical doctor, and the district superintendent the student's multidisciplinary team is unable to attend the public schools in the district because of a physical or mental disability or because of a learning disability, such the school district shall contract with any accredited private nonsectarian nonprofit corporation within or without outside the state or an out-of-state public school which has proper facilities for the education of such the student, if there are is no public schools school in the state with which has the necessary facilities services and which will accept such the student. No school district shall may enter into a contract with any private nonsectarian nonprofit corporation or out-of-state public school for the education of any student having a physical or learning disability, unless the curriculum services provided by such the school and the contract has have been approved in advance by the superintendent of public instruction. The contract must provide that such the school district agrees to pay to the private nonsectarian nonprofit corporation or the out-of-state public school as part of the cost of educating such the student an amount for the school year equal to two and one-half times the state average per-pupil per student elementary or high school cost, depending on whether upon the student's level of enrollment would be in a grade or high school department; provided, that such. The payment may not exceed the actual per-pupil per student cost incurred by such the private nonsectarian nonprofit corporation or out-of-state public school. The transportation must be furnished and reimbursed as provided by rules of the department superintendent of public instruction. The rules of the department of public instruction have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident must be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the individualized education program at a rate not to exceed that paid state officials. The remainder of the actual cost of educating the student with disabilities not covered by other payments or credits must be paid from funds appropriated by the legislative assembly for special education notwithstanding limitations cited in section 15-59-06. The district of residence is entitled to the per-pupil per student foundation payment. The reimbursement herein provided to the contracting district from the state special education funds is in lieu of any other foundation aid to which the district might otherwise be entitled.

**SECTION 7. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the amount included in the grants - special education line item in subdivision 1 of section 1 of Senate Bill No. 2013 be distributed as follows:

1. Ten million dollars must be used to reimburse school districts for excess costs incurred on contracts for students with disabilities as required in section 15-40.2-08 and for low incidence or severely disabled students as required in sections 15-59-06 and 15-59-07, and for boarding care reimbursements as required in section 15-59-07.2;

2. Four hundred thousand dollars must be used to reimburse school districts for gifted and talented programs upon the submission of an application that is approved in accordance with guidelines adopted by the superintendent of public instruction;
3. Five hundred thousand dollars must be used to reimburse school districts with above-average incidence of moderately or severely disabled students upon the submission of an application that is approved in accordance with guidelines adopted by the superintendent of public instruction;
4. Any amount remaining in the line item must be distributed on a per student basis as required by law, except that during the 1995-96 school year a school district or special education unit may not receive less than ninety-five percent of the amount received during the 1993-94 school year from state special education funds, excluding reimbursements for student contracts, boarding care, and gifted and talented programs.

During the 1996-97 school year a district or special education unit may not receive less than ninety percent of the amount received during the 1993-94 school year from state special education funds, excluding reimbursements for student contracts, boarding care, and gifted and talented programs.

**SECTION 8. LEGISLATIVE COUNCIL STUDY.** During the 1995-96 interim, the legislative council shall consider studying the equitable provision of services to students who are gifted and talented, the equitable funding of such programs, and whether those services should be funded independently of or together with services provided to students who are disabled. If this study is conducted, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-fifth legislative assembly.

Approved April 13, 1995  
Filed April 18, 1995

**CHAPTER 195****SENATE BILL NO. 2248**

(Senators Freborg, O'Connell)  
(Representative Delzer)

**SCHOOL DISTRICT TRANSPORTATION PAYMENTS**

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to the distribution of school district transportation payments; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

**School district closure - Distribution of transportation payments.**

1. If a school district ceases to exist, the superintendent of public instruction shall calculate the amount of transportation payments to which the former school district would have been entitled for providing transportation services during its final year of operation and shall certify the amount of transportation payments to the office of management and budget. The office of management and budget shall pay a percentage of the total amount certified to each North Dakota school district that enrolls students who attended the former school district during the prior school year. Each of the school districts eligible for a payment under this section is entitled to receive that percentage of the total amount certified which is the same as the percentage that the number of the district's students who attended the former school district during the prior school year bears to the total number of students who attended the former school district during the prior school year.
2. Except as provided in subsection 3, the office of management and budget shall pay the amount certified to the school district in the manner and at the time provided for other state payments in section 15-40.1-05.
3. The total transportation payments to which a school district that ceased to exist between the completion of the 1993-94 school year and the commencement of the 1994-95 school year is entitled must be distributed as provided in subsection 1 on or before June 30, 1995.

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

Approved March 15, 1995  
Filed March 15, 1995

**CHAPTER 196****HOUSE BILL NO. 1044**

(Legislative Council)  
(Interim Education Finance Committee)  
(Representative Kaldor)  
(Senator Kelsh)

**TRANSPORTATION OF STUDENTS BETWEEN  
DISTRICTS**

AN ACT to amend and reenact sections 15-40.2-04, 15-40.2-05, and 15-40.3-05 of the North Dakota Century Code, relating to the transportation of students participating in open enrollment and other nonresident students; and to repeal section 15-34.2-02 of the North Dakota Century Code, relating to agreements for transportation of nonresident students.

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

<sup>98</sup> **SECTION 1. AMENDMENT.** Section 15-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-04. Nonresident tuition payments mandatory - Payments are exclusive.**

1. a. Except as provided in this subsection, any school district that admits nonresident students to its schools, as provided by this chapter, shall charge tuition for those students. School districts have the option of charging tuition for nonresident students enrolled in an approved alternative education program. The whole amount of the tuition must be paid by the district from which the student is admitted, in accordance with section 15-40.2-03, or by the student's parent or guardian, in accordance with section 15-40.2-06.
- b. Except as otherwise provided, any school district that fails to charge and collect tuition for nonresident students as provided for in section 15-40.2-03 and this section shall forfeit foundation payments for those nonresident students for whom tuition is not paid. A school district may accept a nonresident student from another school district in this state which offers the same grade level as that in which the student is enrolled, without a charge and collection of tuition if a written agreement is made between the sending and receiving districts. The written agreement must specify whether transportation is to be provided and if so, by which district. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student. No written agreement is necessary if

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<sup>98</sup> Section 15-40.2-04 was also amended by section 16 of Senate Bill No. 2209, chapter 177.

the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.

- c. No school district may charge or collect from any nonresident student, parent or guardian of a nonresident student, or the district of the student's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident students.
2. For purposes of subsection 1 and all statutory provisions relating to open enrollment, the member districts of a consortium must be treated as a single school district.

**99 SECTION 2. AMENDMENT.** Section 15-40.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-05.** Application of parent or guardian for payment of tuition by district. The parent or guardian of any pupil student who is a resident of a district may apply in writing to the school board of the student's school district of residence ~~of the pupil~~ for approval of the payment of tuition charges to another school district for attendance of the pupil in such other student in another school district. The school board shall, within sixty days of its receipt of such the application, meet with the student's parent or guardian of the pupil concerned and render a decision in regard to the payment of tuition charges. If the school board has not rendered a decision within sixty days of receipt of the application, the application ~~must be~~ is deemed approved. If the school board of the district of residence approves ~~such the~~ application, it shall pay the tuition charges. ~~In the event such~~ If the application is disapproved, the student's parent or guardian of the pupil may file an appeal with the county superintendent of schools; ~~and a.~~ A three-member committee consisting of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools shall within fifteen days consult with the school boards of the districts concerned and with the student's parent or guardian of the pupil concerned, hold a hearing; after giving advance notice to the parties directly involved, and render a decision in regard to the payment of ~~the~~ tuition charges. The hearing must be conducted in a manner that allows the arguments and responses of all parties to be presented. In making its decision, the committee shall determine whether the pupil student is a high school pupil student, which, for purposes of this section, must be defined to mean grades nine through twelve, ~~or whether the pupil student is an elementary school pupil student~~, which, for purposes of this section, must be defined to mean grades one through eight, or whether the pupil student is a kindergarten pupil student, which, for purposes of this section, must be defined as a program established pursuant to chapter 15-45, and then proceed in accordance with the following:

1. High school. If the pupil student is a high school pupil student and the committee finds that the attendance of ~~such pupil the student~~ is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the particular pupil student, or ~~in cases of~~ extreme family or pupil

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<sup>99</sup> Section 15-40.2-05 was also amended by section 5 of Senate Bill No. 2159, chapter 173.

student hardship, the committee may approve ~~or disapprove~~ the application. Upon approval, the committee shall approve the payment of tuition by the student's district of residence of the pupil, obligating ~~such the~~ district of residence to pay the same. The committee's approval for the payment of tuition may be for any fixed number of school terms, up to the completion of the ~~pupil's~~ student's high school education. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.

2. Elementary. If the pupil student is an elementary pupil student and the committee finds that the attendance of ~~such pupil the student~~ is necessitated by shorter distances or ~~in cases of~~ extreme family or pupil student hardship, the committee may approve ~~or disapprove~~ the application. Upon approval, the committee shall approve the payment of tuition by the student's district of residence of the pupil, obligating ~~such and obligate the~~ district of residence to pay the same. The committee's approval for the payment of tuition is limited to one school term, and subsequent applications for the payment of tuition may be made annually. The decision of the committee is final.
3. Kindergarten. If the pupil student is a kindergarten pupil student, the school board of the student's district of the pupil's residence may pay tuition to the receiving district. The committee may not hear an appeal from the parents or guardian as provided for in this section if the school board of the district of residence decides not to pay tuition to the admitting district. If the school board of the district of residence does not pay the tuition to the admitting district, the student's parent or guardian of the pupil may pay the tuition to the admitting district under the provisions of section 15-40.2-02.

If any portion of the school district lies in more than one county, the joint committee ~~shall must~~ consist of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools from each county lying within the district; ~~and the~~. The concurrence of a majority of the quorum of the joint committee must is necessary to render a decision regarding the payment of the tuition. ~~In the event that~~ If the student's district of residence of the pupil does not comply with the decision requiring that the tuition charges be paid, the admitting district shall notify the county superintendent of schools of the county of the pupil's student's residence and the state superintendent of public instruction of such fact, and upon. Upon verification by the county superintendent of schools that ~~such~~ tuition payments are ~~in fact~~ due the admitting district and are unpaid, all payments from the state for foundation aid to the student's district of residence of the pupil, must be withheld until the tuition due has been fully paid.

This section may not be construed to require the A school district of residence to may provide pupil transportation or payments in lieu thereof, for pupils for whom the payment of tuition has been approved to a student for whom tuition is being paid under this section. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student.

**SECTION 3. AMENDMENT.** Section 15-40.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.3-05. Open enrollment - Transportation.** ~~The A school~~ district of residence ~~of may provide transportation to a student participating in open enrollment under this chapter has no obligation to provide transportation.~~ ~~However, the If a school~~ district of residence ~~may enter into a transportation arrangement with~~ does not provide transportation to a student participating in open enrollment, transportation may be provided by the admitting district ~~as provided in section 15-34.2-02,~~ and the admitting district is then entitled to state payments for the transportation of that student.

**SECTION 4. REPEAL.** Section 15-34.2-02 of the North Dakota Century Code is repealed.

Approved March 7, 1995  
Filed March 8, 1995



**CHAPTER 197****HOUSE BILL NO. 1351**

(Representatives Aarsvold, Kaldor, Kempenich)  
(Senators Freborg, Redlin, Robinson)

**OPEN ENROLLMENT APPLICATION PROCEDURES**

AN ACT to amend and reenact section 15-40.3-01 of the North Dakota Century Code, relating to open enrollment application procedures.

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

**SECTION 1. AMENDMENT.** Section 15-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.3-01. Open enrollment - Procedure.** A student's parent or legal guardian who wishes to enroll the student in a North Dakota school district other than the student's district of residence shall, not later than ~~January~~ February first of the school year preceding the year of enrollment, apply to the school board of the student's district of residence, on forms provided by the superintendent of public instruction, for approval to enroll the student in a district other than the student's district of residence. By ~~February~~ March first of the school year preceding the year of enrollment, the school board of the district of residence shall act on the application, notify the parent or legal guardian of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district. By ~~March~~ April first, the board of the admitting district shall approve or disapprove the application. The board of the admitting district shall notify the board of the district of residence and the student's parent or legal guardian within five days regarding its decision. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year, unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district, or the student's parents or guardians change residence to another district. All applications must be reviewed in the order that they are received. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. A child placed at a group or residential care facility or a residential treatment center in accordance with section 15-40.2-08 is not eligible for open enrollment under this section. The school board of a school district of residence and of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent or legal guardian, moves from the student's school district of residence to another school district after February first and who wishes to enroll in a school district, other than the district to which the student moved, for the following year.

Approved March 9, 1995

Filed March 13, 1995

**CHAPTER 198****SENATE BILL NO. 2458**

(Senators Grindberg, Heinrich, Holmberg, Scherber)  
(Representatives Jacobs, Rennerfeldt)

**SCHOOL PROPERTY DESTRUCTION**

AN ACT to amend and reenact section 15-47-25 of the North Dakota Century Code, relating to the destruction of school property.

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

**SECTION 1. AMENDMENT.** Section 15-47-25 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-25. Reward - Destruction of school property.** ~~The A school boards of the school districts in this state are hereby authorized and empowered to board may~~ offer and pay a reward not to exceed ~~one hundred~~ three thousand dollars to any person ~~furnishing~~ who furnishes information for the apprehension and conviction of any person ~~or persons~~ appropriating or destroying property or equipment belonging to ~~the a school districts of district in~~ this state.

Approved March 17, 1995

Filed March 20, 1995

## CHAPTER 199

## SENATE BILL NO. 2211

(Education Committee)

(At the request of the Superintendent of Public Instruction)

## INDUSTRIAL, DEAF, AND BLIND SCHOOLTEACHERS

AN ACT to create and enact a new section to chapter 15-47 and a new subsection to section 54-44.3-20 of the North Dakota Century Code, relating to teachers employed by the state industrial school, school for the deaf, and school for the blind; and to amend and reenact sections 15-47-26, 15-47-27, and 15-47-27.1 of the North Dakota Century Code, relating to the definitions of teacher, renewal of teacher contracts, evaluation of first-year teachers, and nonrenewal of teacher contracts.

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

**SECTION 1. AMENDMENT.** Section 15-47-26 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-26. Teacher defined.** The term "teacher", as used in section 15-47-28, includes all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education, the state industrial school, the school for the deaf, and the school for the blind. The term "teacher", as used in sections 15-47-27 and 15-47-38, includes all teachers, principals, assistant superintendents, and all persons employed in teaching in any state institution, except institutions of higher education, the state industrial school, the school for the deaf, and the school for the blind. For purposes of the sections above referenced, the term "teacher" does not include teachers who are replacing teachers on leave of absence or sabbatical leave or, for purposes of nonrenewal, teachers who are in their first year of teaching and teachers who are employed after January first as to that school year. A teacher hired after January first has all the rights provided in section 15-47-27.1 except that only one evaluation is required during that school year.

**SECTION 2. AMENDMENT.** Section 15-47-27 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-27. Time for renewal of teachers' contracts.** Any teacher who has been employed by any school district; ~~the department of corrections and rehabilitation; or the superintendent of public instruction~~ in this state during any school year, must be notified in writing by the school board; ~~the department of corrections and rehabilitation; or the superintendent of public instruction; as the case may be;~~ not earlier than March first and not later than May first in the school year in which that teacher has been employed to teach, of the determination not to renew the teacher's contract for the ensuing school year, if the determination has been made; and failure to give written notice on or before that date constitutes an offer to renew the contract for the ensuing school year under the same terms and conditions as the contract for the then current year. On or before May first in any year and not earlier than March first, all teachers must be notified of a date, which must not be less than thirty days after the date of the notice, upon which they shall accept or reject proffered reemployment, and failure by the teacher to accept the offer within that time is a rejection of the offer. Any teacher accepting the offer of

reemployment, either by the action or nonaction of the school board; ~~the department of corrections and rehabilitation; or the superintendent of public instruction;~~ on or before May first, as herein provided, is entitled to the usual written contract for the ensuing school year, under law and shall notify the school board; ~~the department of corrections and rehabilitation; or the superintendent of public instruction~~ in writing of the teacher's acceptance or rejection on or before the date specified or before June first, whichever is earlier. Failure by the teacher to provide that notification relieves the school board; ~~the department of corrections and rehabilitation; or the superintendent of public instruction~~ of the continuing contract provision of sections 15-47-26 through 15-47-28. This section does not repeal or limit the operation of any existing law with reference to the dismissal of teachers for cause. Each district shall have an established system through which two written evaluations are prepared for every teacher employed by the district for each of the first three school years the teachers are employed by the school district. These written performance reviews must be completed and made available to the teacher no later than December fifteenth for the first review and March fifteenth for the second review each year. After three years of employment by a school district, each teacher must be evaluated at least once every school year, and the written performance review must be completed and made available to the teacher no later than March fifteenth.

**SECTION 3. AMENDMENT.** Section 15-47-27.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-27.1. First-year teachers - Evaluation - Renewal and nonrenewal of contracts.** Each school district; ~~the department of corrections and rehabilitation; and the superintendent of public instruction~~ in this state shall have an established system through which two written evaluations are prepared during each school year for every teacher in his or her first year of teaching. The evaluation must be in the form of written performance reviews, and the first review must be completed and available to first-year teachers no later than December fifteenth and the second review must be completed and made available no later than March fifteenth of each year. A school board contemplating not renewing the contract of a first-year teacher shall, after reviewing the evaluations, meet in an executive session with the teacher to discuss the reasons for the proposed nonrenewal. The teacher may be represented at the meeting by two representatives of the teacher's own choosing and the teacher's spouse or one other family member of the teacher's choice. No claim for relief for libel or slander may be brought for any statement expressed either orally or in writing at any executive session of the school board held pursuant to this section. If a school board; ~~the department of corrections and rehabilitation; or the superintendent of public instruction~~ determines not to renew the contract of a first-year teacher, written notification of the decision of nonrenewal must be given to the teacher no earlier than April fifteenth nor later than May first. Failure by a school board; ~~the department of corrections and rehabilitation; or the superintendent of public instruction~~ to provide written notification of nonrenewal to a first-year teacher by May first constitutes an offer to renew the contract of the teacher for the ensuing school year under the same terms and conditions as the contract for the current year. The notification of nonrenewal given to a first-year teacher must contain a detailed description of the reason or reasons for the nonrenewal.

**SECTION 4.** A new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Teachers employed by the state industrial school, school for the deaf, and school for the blind.

1. The term "teacher", as used in this section, means a contracted state employee holding a professional certificate and certified by the superintendent of public instruction to teach in this state, whose primary task is to provide direct instruction in a classroom, or on an individualized basis, and whose work schedule must be in accordance with the school calendar, guidance counselors, school librarians, itinerant outreach teachers, and vocational and other technological resource personnel who are required to meet the same teaching and certification requirements. Superintendents, assistant superintendents, principals, supervisory personnel, substitutes, and all paraprofessionals are not included in this definition.
2. The superintendent of public instruction for the school for the blind and the school for the deaf, and the director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation for the state industrial school in administering the schools under their authority shall develop contracts for employment of teachers in their departments and establish teacher personnel policies needed for administration of the schools. The contracts may include assignment of job duties, teacher salaries, hours, and job titles, a school calendar, and a salary schedule. The personnel policies adopted under this section must include job descriptions and nonrenewal, discipline, and dismissal procedures, and must seek to harmonize the rights of teachers with law governing state employees. The superintendent of public instruction and the director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation shall work together in the development of personnel policies for teachers employed by their respective departments. Each teacher is entitled to receive a printed copy of a master agreement, which consists of a policy manual and an individualized contract specifying the annual school calendar and each teacher's contracted hours, rate of pay, job title, salary schedule, applicable benefits, and other details pertinent to a teacher's employment.

<sup>100</sup> SECTION 5. A new subsection to section 54-44.3-20 of the North Dakota Century Code is created and enacted as follows:

Certificated teachers engaged in teaching at the state industrial school, the school for the blind, and the school for the deaf.

Approved April 13, 1995  
Filed April 18, 1995

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<sup>100</sup> Section 54-44.3-20 was also amended by section 9 of Senate Bill No. 2181, chapter 458; section 4 of House Bill No. 1501, chapter 524; and section 1 of House Bill No. 1250, chapter 525.

**CHAPTER 200****SENATE BILL NO. 2290**

(Senators W. Stenehjem, Grindberg, St. Aubyn)

(Representatives Delmore, Kliniske, Poolman)

**SCHOOL SAFETY PATROL IMMUNITY**

AN ACT relating to the establishment of school safety patrols and immunity from liability; and to repeal sections 15-47-44 and 15-47-45 of the North Dakota Century Code, relating to the authorization and appointment of school safety patrols.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. School safety patrols - Establishment - Adoption of standards.**

The board of a public school district or the governing body of a nonpublic school may authorize school principals or administrators to establish safety patrols at schools under their control and to appoint students to the safety patrols. Any student age eleven or older is eligible for appointment to a safety patrol, provided the student's parent or legal guardian has filed written permission with the school principal or administrator. The superintendent of public instruction shall adopt standards to guide safety patrol members in the conduct of their duties and shall specify the identification to be worn and the signals to be used by safety patrol members while on duty.

**SECTION 2. School safety patrols - Immunity from liability.** The superintendent of public instruction, schools, school boards and individual school board members, governing boards and individual governing board members, administrators, principals, teachers, safety patrol members whether students or adults, and parents or legal guardians of safety patrol student members are immune from any liability that might otherwise be incurred as a result of an injury to a safety patrol member or as a result of an injury caused by an act or omission on the part of a safety patrol member while on duty, provided that such persons substantially complied with the standards to guide safety patrol members, as adopted by the superintendent of public instruction.

**SECTION 3. REPEAL.** Sections 15-47-44 and 15-47-45 of the North Dakota Century Code are repealed.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 201

### HOUSE BILL NO. 1496

(Representatives Rydell, Kelsch)  
(Senators Freborg, Wanzek)

### SCHOOL REPORTS

AN ACT to create and enact a new section to chapter 15-47 of the North Dakota Century Code, relating to school reports.

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

**SECTION 1.** A new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

#### **School reports - Contents.**

1. Each year the chief administrative officer of each public school having students in any grades between kindergarten and grade twelve in the state shall complete a school report on forms provided by the department of public instruction.
2. Each year the governor may convene an ad hoc committee to establish and review the information obtained from the school reports and to make any necessary changes in any information requirements. The governor or a designee of the governor shall serve as the chairman. The members of the ad hoc committee must include:
  - a. Two individuals selected by the governor from a list of five nominees recommended by the North Dakota council of school administrators.
  - b. Two individuals selected by the governor from a list of five nominees recommended by the North Dakota education association.
  - c. Two individuals selected by the governor from a list of five nominees recommended by the North Dakota school boards association.
  - d. Two individuals selected by the governor from a list of five nominees recommended by the North Dakota parent-teachers association.
  - e. Two parents of school-age children, appointed by the governor.
  - f. Two high school students, appointed by the governor.
  - g. The superintendent of public instruction or a designee of the superintendent.

Approved March 27, 1995  
Filed March 28, 1995

## CHAPTER 202

### HOUSE BILL NO. 1047

(Legislative Council)  
(Interim Education Services Committee)  
(Representative Oban)  
(Senators Scherber, St. Aubyn)

## EDUCATION OF CHILDREN IN LEAST RESTRICTIVE ENVIRONMENT

AN ACT to amend and reenact section 15-59-02.1 of the North Dakota Century Code, relating to legislative intent regarding the delivery of special education.

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

<sup>101</sup> **SECTION 1. AMENDMENT.** Section 15-59-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-59-02.1. Legislative intent - Special education.** This statement of legislative intent is provided to define more clearly the relationship between the state, school districts, and parents of children with disabilities in the provision of special education and related services. "Related services" means transportation and such developmental and corrective or supportive services required to assist a child with disabilities to benefit from special education.

The school administrator or the administrator's appointed representative or director of special education other than the child's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the student with disabilities, and make recommendations for required special education and related services.

The legislative assembly believes that in order to assure equality of services ~~which that~~ are provided for by limited state funds, the ~~department~~ department superintendent of public instruction will be required to approve a contract for services based on an individualized education program developed for each student with disabilities placed in a private school program or in programs outside the student's original special education unit.

The legislative assembly believes that when money is distributed to a school district for special education personnel, the ~~department~~ department superintendent of public instruction should give consideration to the units of services provided by the district, the district's special education program costs, and the district's special education program needs.

The legislative assembly recognizes that a student with disabilities whose individualized education program so requires is entitled to an educational program

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<sup>101</sup> Section 15-59-02.1 was also amended by section 2 of House Bill No. 1058, chapter 243, and section 4 of Senate Bill No. 2063, chapter 194.



in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the disability. All summer programs attended by these students must have approval of the department superintendent of public instruction before receiving foundation aid or state special education reimbursement.

In the case of students with disabilities who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, including boarding care, be borne by state special education funds and school district funds.

"All children with disabilities have the right to a free appropriate public education" means that all students with disabilities have the right to special education and related services which must be provided at public expense, under public supervision and direction and at no cost to parents. "At no cost" means specifically designed instruction and related services as described in the student's individualized education program plan provided without charge but does not preclude expenses incidental fees that are normally incurred or charged to nondisabled students or their parents of children who are nondisabled as a part of the regular education program. Parents will assume such costs for a child with disabilities as they would if the child was nondisabled. Personal items, including hearing aids, eyeglasses, routine medical expenses, physical exams, medications, and all items necessary for a child who is nondisabled, will be the financial responsibility of the parent.

School districts must require use of family insurance, or similar third-party payments, in whatever amount is allowed, as long as there is no financial loss to the child or the child's parent, for determining a child's medically related disability or other required related services which results in the child's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a student with disabilities resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the department superintendent of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by the parent of a child with disabilities or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the department of human services has authority under chapter 25-16 to provide early intervention services to meet the needs of children with disabilities ages zero through two years, the legislative assembly recognizes this provision and requires the ~~department~~ superintendent of public instruction, the state department of health and consolidated laboratories, and the department of human services to cooperate in planning and coordinating programs for these children.

Approved March 10, 1995

Filed March 10, 1995

## CHAPTER 203

### HOUSE BILL NO. 1178

(Representatives Carlisle, Skarphol, Austin)  
(Senators Kinnoin, O'Connell)

## STUDENT EXPULSION FOR FIREARM POSSESSION ON SCHOOL PROPERTY

AN ACT relating to the implementation of weapons policies and the expulsion of a student for possessing a firearm on school property; and to amend and reenact subsection 13 of section 15-29-08 of the North Dakota Century Code, relating to the suspension or expulsion of a student from school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 and 2 of this Act:

1. "Firearm" has the meaning given in 18 U.S.C. 921 [Pub. L. 90-351; 82 Stat. 197].
2. "School property" includes all school land, buildings, structures, facilities, and school vehicles whether owned or leased by a school district, and the site of any school-sponsored event or activity.

SECTION 2. Weapons policies - Possession of a firearm - Prohibitions - Exceptions.

1. Each school board shall by resolution implement a policy governing the possession of weapons on school property and at school functions and provide for the punishment of any student found to be in violation.
2. The weapons policy must prohibit the possession of a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion for at least one year. The policy must authorize the school district superintendent or the school principal if the school district does not have a superintendent to modify an expulsion under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board shall, within ten days of the student's suspension, provide the student with a hearing before the school board at which time the school board must take testimony and consider evidence, including the existence of mitigating circumstances. A school board that expels a student under this subsection may provide educational services to the student in an alternative setting.
3. Actions taken under this section must be in accordance with chapter 15-59 and the Individuals with Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
4. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all

requirements set by the principal regarding the safe handling and storage of the firearm.

<sup>102</sup> **SECTION 3. AMENDMENT.** Subsection 13 of section 15-29-08 of the North Dakota Century Code is amended and reenacted as follows:

13. To adopt, alter, and repeal, when it deems it expedient, rules and regulations for the reception, organization, grading, government, and instruction of ~~pupils~~ students, and for their suspension, expulsion, or transfer from one school to another. ~~No pupil shall~~ Students may be suspended or expelled ~~except~~ for insubordination, habitual indolence, ~~or~~ disorderly conduct, ~~and or under section 2 of this Act.~~ Except as provided in section 2 of this Act and section 15-38-13.1, a suspension shall not be for a longer period than ten days except as provided in section 15-38-13.1, nor shall an expulsion be in effect beyond the end of the current term of school year.

Approved April 17, 1995

Filed April 18, 1995

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<sup>102</sup> Section 15-29-08 was also amended by section 1 of Senate Bill No. 2491, chapter 186.

## CHAPTER 204

## HOUSE BILL NO. 1216

(Representative Dalrymple)

## SCHOOL CONSTRUCTION LOANS

AN ACT to amend and reenact section 15-60-10 of the North Dakota Century Code, relating to school construction loans; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>103</sup> SECTION 1. AMENDMENT. Section 15-60-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-60-10. Loans.**

1. The board may make loans for purposes described in this chapter to school districts from moneys deposited in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02. The board shall consider an application for a loan in the order of its approval by the superintendent under subsection 2 of section 15-35-01.1. The outstanding principal balance of loans made from the fund under this chapter may not exceed twenty-five million dollars.
2. An application for a loan A project must be approved by the superintendent pursuant to section 15-35-01.1 before the application a loan may be issued under this section. An application for a loan must be submitted to the board superintendent. The application may be submitted before or after authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the application for a loan, the application must be acted upon by the superintendent expeditiously, but no later than one hundred eighty days from the date it is received by the superintendent. The application must contain information deemed necessary by the superintendent, including a discussion of alternative sources or methods for financing the construction or improvement, and must be considered in the order of its approval under subsection 1 of section 15-35-01.1. If the superintendent approves the loan, the superintendent may also determine the loan amount and a percent of interest to be paid on the loan. In determining the amount of a loan, the superintendent shall take into account the cost of the project and the fiscal capacity of the school district. To be eligible for a loan, the school district must have an existing indebtedness equal to at least fifteen percent of the school district's taxable valuation. In determining a school district's existing indebtedness, the superintendent shall include outstanding indebtedness authorized by an election under section 21-03-07 but not issued, and indebtedness authorized to be paid

<sup>103</sup> Section 15-60-10 was also amended by section 4 of Senate Bill No. 2124, chapter 163.

with dedicated tax levies under subsection 7 of section 21-03-07 but not issued. The interest on a loan may not exceed the rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the superintendent pursuant to section 15-35-01.1, provided the interest rate may not exceed six percent.

3. Loan applications approved by the board must be forwarded to the Bank. The Bank shall assist the board by preparing and approving the loan documents, handling the loan closing, and servicing the loan. The Bank shall receive payments of principal and interest from the school districts, and shall remit payments of principal to the board for redeposit in the fund. The interest must be used and deposited in accordance with section 21 of article X of the Constitution of North Dakota.

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

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 205

### HOUSE BILL NO. 1112

(Education Committee)

(At the request of the Bank of North Dakota)

## GUARANTEE STUDENT LOAN PROGRAM

AN ACT to amend and reenact section 15-62.1-01, subsection 1 of section 15-62.1-02, sections 15-62.1-03 and 15-62.1-05 of the North Dakota Century Code, relating to a state guarantee student loan program.

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

**SECTION 1. AMENDMENT.** Section 15-62.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.1-01. Guarantee student loan programs - Administration - Advisory board.** The Bank of North Dakota, hereinafter called the "agency", is the state agency designated to administer state guarantee loan programs, as provided in this chapter. The advisory board of directors to the Bank of North Dakota ~~appointed pursuant to chapter 6-09~~ shall act in an advisory capacity concerning the programs. The agency, upon recommendation of the advisory board and subject to approval of the industrial commission, shall expend moneys received and from the interest earned on the principal balance in the reserve funds established pursuant to this chapter as may be necessary to implement and administer the programs. The term "student" includes a parent borrower under this chapter and the term "coinsurance" includes reinsurance.

**SECTION 2. AMENDMENT.** Subsection 1 of section 15-62.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. To guarantee all loans which satisfy the requirements set forth in title IV, part B, of the Higher Education Act of 1965, as amended, upon terms, conditions, and application procedures commensurate with the federal Higher Education Act of 1965 [20 U.S.C. 1001 et seq.], as amended, if federal coinsurance of student loans guaranteed by the agency is available. If at any time the agency determines that student loans made under the terms and conditions of federal coinsurance programs are no longer adequately serving the needs of North Dakota students attending postsecondary institutions, or if federal coinsurance is no longer available, the agency shall notify the industrial commission or its designee. Upon approval of the industrial commission or its designee, the agency shall guarantee student loans without federal coinsurance pursuant to rules made by the agency relating to terms for applicant eligibility in accordance with the provisions of this chapter. If loans are guaranteed without federal coinsurance, the agency may not adopt eligibility requirements or loan limits for student loans to qualify for guarantee by the agency which are more restrictive than those eligibility requirements or loan limits existent as of the date the industrial commission approves the guarantee of loans without federal coinsurance or the date of the termination of programs providing for federal coinsurance of loans guaranteed by the agency. Students whose loans are guaranteed by the agency must be students who have been accepted

for enrollment or are attending eligible postsecondary institutions located within or without this state, and whose loans are for the purpose of assisting them in meeting their expenses of postsecondary education. Students who are accepted for enrollment or are attending eligible proprietary or postsecondary institutions of higher education on at least a half-time basis, as determined by the ~~postsecondary~~ institutions, are eligible to have loans guaranteed by the agency. The agency shall, by rule, establish minimum qualifications for a person to be deemed a part-time student for purposes of this chapter.

**SECTION 3. AMENDMENT.** Section 15-62.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.1-03. Rates of interest permissible for guaranteed loans.** All loans guaranteed by the agency and coinsured by the federal government must bear interest at rates which are no greater than those provided under the federally coinsured loan programs. In the event that the agency guarantees student loans without federal coinsurance pursuant to section 15-62.1-02, such loans must bear interest at rates which are no greater than the base participation rate as established by the Bank of North Dakota, plus no more than two percentage points, in effect on the date the loan is made.

**SECTION 4. AMENDMENT.** Section 15-62.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.1-05. Establishment and maintenance of adequate guarantee funds - Appropriation.** The agency shall establish and at all times maintain from funds appropriated under this chapter adequate guarantee reserve funds in special accounts in the Bank of North Dakota. The fund for loans which are coinsured by the federal government must be maintained at a minimum amount equal to two percent of the unpaid principal amount of the loans. The fund for loans which are not coinsured by the federal government may not be less than one-tenth of the dollar value of the total portion of such loans. Funds appropriated under this chapter and designated as guarantee agency reserve funds for loans that are not coinsured by the federal government must be administered separately and segregated from reserve funds for loans that are coinsured by the federal government. The agency is authorized to enter into an agreement with the federal government for the coinsurance of loans guaranteed under this program. The securities in which the moneys in the reserve funds may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the respective guarantee loan programs and income in excess of that required to pay the cost of administering the programs must be deposited in the respective reserve funds fund that corresponds to the source of the initial invested funds. The proceeds of such reserve funds received from federal, state, or private sources for the purpose of guaranteeing loans made to students as provided in this chapter are hereby appropriated as a continuing appropriation for the payment of defaulted loans guaranteed by each respective fund.

Approved March 10, 1995  
Filed March 10, 1995



# ELECTIONS

## CHAPTER 206

### SENATE BILL NO. 2455

(Senators Watne, Bowman, Krebsbach, C. Nelson, Scherber)

## INITIATIVE, REFERENDUM, AND RECALL PETITIONS

AN ACT to amend and reenact sections 16.1-01-07, 16.1-01-10, 16.1-06-09, and 44-08-21 of the North Dakota Century Code, relating to initiative, referendum, and recall petitions; and to repeal section 16.1-06-09.1 of the North Dakota Century Code, relating to statements of intent on constitutional amendments.

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

**SECTION 1. AMENDMENT.** Section 16.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-07. Constitutional amendments and other questions to be advertised - Notification by secretary of state - Manner of publishing.** Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than fifty-five days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05. Questions to be submitted to the people of a particular county must be advertised in the same manner.

The secretary of state shall, at the same time ~~he~~ the secretary of state certifies notice to the county auditors of the submission of a constitutional amendment or other question, certify the ballot form for such questions. The ballot form must conform to the provisions of ~~sections~~ section 16.1-06-09 and ~~16.1-06-09.1~~ and must be used by all county auditors in preparing ballots for submission to the electorate of each county and in the preparation of sample ballots. Sample ballots must conform in form and style to samples of such ballots contained in the legal publications handbook prepared under subsection 5 of section 46-01-02. Any requirements in this title that a sample ballot be published will be met by the publication of either the paper ballot or the ballot as it will appear to persons using a voting machine, depending upon the method of voting used in the area involved. Absentee voter ballots may not be considered in determining which method of voting is used in an area. If both paper ballots and voting machines are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. At the same time as the sample ballot is published, an analysis of any constitutional amendment, initiated measure, or referred measure, written by the secretary of state after consultation with the attorney general, must be published in columns to enable the electors to become familiar with the effect of the proposed constitutional amendment or initiated or referred measure, in addition to the sample ballot listing ballot titles.

**SECTION 2. AMENDMENT.** Section 16.1-01-10 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-10. Secretary of state to pass upon sufficiency of petitions - Method - Time limit.** The secretary of state shall have a reasonable period, not to exceed thirty-five days, in which to pass upon the sufficiency of any petition mentioned in section 16.1-01-09. The secretary of state shall conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, post cards, telephone calls, personal interviews, or other accepted information gathering techniques, or any combinations thereof, to determine the validity of the signatures. Signatures determined by the secretary of state to be invalid may not be counted, and all violations of law discovered by the secretary of state must be reported to the attorney general for prosecution. ~~When the petition is for the recall of an elected official of a political subdivision under section 44-08-21, the petition must be deemed insufficient unless the petition contains a stated reason or reasons for the recall consistent with the reasons provided in section 44-08-21.~~

**SECTION 3. AMENDMENT.** Section 16.1-06-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-09. Constitutional amendments and initiated and referred measures - Placed on separate ballot - Manner of stating question - Explanation of effect of vote - Order of listing.** Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, must be printed on a separate ballot and must be deposited in a box separate from that provided to receive the ballots for public officers. A constitutional amendment, initiated or referred measure, or other question must, unless otherwise determined by the secretary of state, be stated in full in a legible manner on the paper ballot or the ballot card when using an electronic voting system purchased after June 30, 1985, and the ballot label when using an electronic voting system purchased before July 1, 1985. If the secretary of state concludes the amendment or measure is too long to make it practical to print in full, ~~the amendment or measure may be printed by ballot title only and in the manner specified by the secretary of state. The ballot title must be written by the secretary of state and approved by the attorney general. The size of type to be used on such ballots must be specified by the secretary of state. Immediately preceding the ballot title or the full text of the initiated or referred measure on the printed ballot, the secretary of state in consultation with the attorney general shall cause to be printed a short, concise statement in boldface type summary, which statement must fairly represent the substance of the constitutional amendment, initiated, or referred measure. The attorney general shall approve all such statements written by the secretary of state. Immediately subsequent to After the foregoing statement, the secretary of state shall cause to be printed another short, concise statement of the effect of an affirmative or negative vote on the constitutional amendment or measure, initiated measure, or referred measure in terms of whether the proposal will or will not enact, amend, or repeal a portion or portions of the constitution or laws of the state of North Dakota if an affirmative or negative vote should prevail. This explanatory statement must be drafted by the secretary of state and must be approved by in consultation with the attorney general. The words "Yes" and "No" must be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with a square formed of black lines after each statement in which the voter may indicate by a cross or other mark how he desires to vote on the question. Where two or more amendments or questions are to be voted on, they must be printed on the same ballot. In precincts in which voting machines are used, the ballot title, in the case of amendments or measures submitted by the people, or the title of the legislative bill or resolution, which must serve as the ballot title, in the case of proposed amendments submitted by the~~

legislative assembly, must be set forth in full. Provided, however, in such cases where the ballot title or the title of the legislative bill or resolution is of such length to make it physically impossible to fit such titles upon voting machines, the attorney general shall reduce such titles to a length which will allow the placing of such titles upon voting machines, but shall fully express the purpose of such amendments or questions, and the reduced version of the titles must be used on the voting machines.

The measures to be submitted to the electors must be grouped and classified as constitutional measures, initiated statutes, or referred statutes and must be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly must be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures must be numbered consecutively, without regard to the various groups or classifications.

**SECTION 4. AMENDMENT.** Section 44-08-21 of the North Dakota Century Code is amended and reenacted as follows:

**44-08-21. Recall of elected officials of political subdivisions.** An elected official of a political subdivision, except an official subject to recall pursuant to section 10 of article III of the Constitution of North Dakota, is subject to recall ~~for misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, or gross incompetency~~ by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent general election that the office of the official sought to be recalled was on the ballot, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors. The provisions of section 16.1-01-09, as they relate to signing and circulating recall petitions, apply to petitions under this section.

The petition ~~must~~ may include the stated reason for the recall and must be filed with the official with whom a petition for nomination to the office in question is filed unless that official is the person subject to recall, in which case the petition must be filed with the secretary of state. The official with whom the petition is filed shall pass on the sufficiency of a petition under this section in the manner required of the secretary of state under section 16.1-01-10. Except as otherwise provided in this section, the official shall call a special election to be held within forty days if the official finds the petition valid and sufficient. No special election may be called if the date would be within ninety days of the next scheduled election. An elector's name may not be removed from a recall petition.

The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint a person to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected.

**SECTION 5. REPEAL.** Section 16.1-06-09.1 of the North Dakota Century Code is repealed.

Approved April 18, 1995

Filed April 18, 1995

**CHAPTER 207****SENATE BILL NO. 2332**

(Senator Grindberg)

(Representatives Austin, Carlson)

**ELECTION OFFICIALS, PAY, AND BALLOTS**

AN ACT to provide for political committee registration and corporate political contributions; to amend and reenact sections 15-28-10, 16.1-05-01, subsections 2 and 3 of section 16.1-05-03, sections 16.1-05-05, 16.1-06-15, 16.1-06-18, 16.1-07-05, 16.1-07-12, 16.1-08.1-01, 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, 16.1-08.1-06, 16.1-08.1-07, and 16.1-12-04 of the North Dakota Century Code, relating to campaign contribution statements, election workers, testing election equipment, ballots, political advertisements, and independent candidates; and to repeal chapter 16.1-08 and sections 16.1-11-14 and 16.1-11-17 of the North Dakota Century Code, relating to political committee registration, corporate political contributions, affidavits of candidacy, and filling vacancies in slates of candidates.

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

**SECTION 1. AMENDMENT.** Section 15-28-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-28-10. Duties of election officials - Other statutes applicable.** ~~Sections 16.1-08-02, Section 14 of this Act and sections~~ 16.1-10-01, 16.1-10-06, 16.1-10-06.1, 16.1-10-07, 16.1-10-08, 16.1-13-22, 16.1-13-23, 16.1-13-30, 16.1-15-01, 16.1-15-04, and 16.1-16-04 apply to elections held under sections 15-28-06 and 15-28-09. All expenses of elections held by a school district must be paid by the district.

**SECTION 2. AMENDMENT.** Section 16.1-05-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-01. Election officers.** At each primary, general, and special statewide or legislative district election, and at county elections, each polling place must have an election board in attendance. The election board must consist of an election inspector and at least two election judges.

1. The election inspector must be selected in the following manner:
  - a. In all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and fill all vacancies occurring in those offices.
  - b. In all other precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
  - c. The election inspector shall serve until a successor is named. If an inspector fails to appear for any training session without excuse, the

office is deemed vacant and the auditor shall appoint an individual to fill the vacancy.

Except in the case of special elections, all appointments required to be made under this section must be made at least twenty-one days preceding an election.

2. ~~The election judges and poll clerks for each precinct are the precinct committeemen receiving the largest number of votes at the precinct caucus at which they were elected; and must be appointed by the district chairmen~~ representing the two parties that cast the largest ~~and next largest~~ number of votes in the state at the last general election. ~~If for any reason a precinct committeeman does not wish to serve as an election judge, the district party chairman for that committeeman's party shall appoint from the committeeman's precinct a member of the committeeman's party to serve as election judge.~~ Each election judge ~~and poll clerk~~ must be given a certificate of appointment signed by the chairman of the district committee of the judge's party. In voting precincts or districts in which over one thousand votes are cast in any election, the county auditor may request each district party chairman to appoint an additional election judge. In voting precincts or districts in which over three hundred votes are cast in any election the district party chairmen may each appoint additional poll clerks as determined by the county auditor. The district party chairman shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges ~~and poll clerks~~ at least twenty-one days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges ~~and poll clerks~~. If at any time before or during an election, it shall be made to appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that any election judge or poll clerk is disqualified under this chapter, the inspector shall remove that judge or clerk at once and shall fill the vacancy by appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.
3. ~~Poll clerks must be appointed by the district party chairmen. Each district party chairman may appoint one poll clerk. However, in voting precincts or districts in which over three hundred votes are cast in any election, the district party chairmen may each appoint additional poll clerks as determined by the county auditor. The appointment of poll clerks by the district party chairmen must be made on the basis of the prospective clerks' knowledge of the election procedure and ability to write legibly.~~

**SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 16.1-05-03 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. ~~At least three days before~~ Before each primary and general election, each county auditor or the auditor's designated representative shall conduct training sessions on election laws and election procedures for election officials in the county and may conduct training sessions ~~at least three days before~~ any special statewide or legislative district election.

The session or sessions must be conducted at such place or places throughout the county as the county auditor determines to be necessary. Attendance at the session is mandatory for members of the election board and for poll clerks unless the board of county commissioners determines that the poll clerks in that county may not attend. The county auditor shall notify the members of the election boards, poll clerks if applicable, and the state's attorney of the time and place of the session. The state's attorney shall attend all sessions to give advice on election laws. The county auditor shall invite the district chairman in that county representing any political party casting at least five percent of the total votes cast for governor at the last election to attend the session at the chairman's own expense. On the date of such course or courses, the county auditor may deliver to all election inspectors at such meeting the official ballots and all other materials as provided in chapter 16.1-06. Except as otherwise provided in this section, each person attending the course or courses must be compensated as provided in section 16.1-05-05.

3. An election official, at the option of the county auditor, may be ~~required to attend only two excused from attending a third training sessions session~~ on election laws within a twelve-month period. If an election official has attended a training session within the six months preceding ~~an a special~~ election, the election official must be compensated at the pay appropriate for those having attended a training session, as provided in section 16.1-05-05, for that election.

**SECTION 4. AMENDMENT.** Section 16.1-05-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-05. Compensation of election officers - ~~Commissioner of labor to certify minimum wage applicable to election officials - Secretary of state to certify amount to county auditors. The state commissioner of labor, thirty days before each statewide primary, general, or special election, shall determine the state minimum wage applicable to election inspectors, election judges, poll clerks, or any other private individual who performs duties in the election process, and shall certify the amounts to the secretary of state. The secretary of state shall then certify the amounts to the county auditors.~~** The county auditors shall pay at least the ~~amounts so determined state minimum wage~~ to the relevant election officials. Members of the election board and poll clerks who attend the training sessions provided by section 16.1-05-03 must be paid at least the state minimum wage determined by the state commissioner of labor for the hours in attendance in the session in addition to necessary expenses and mileage. State, county, or other election officials who are required to incur expenses while performing duties in the election process may be reimbursed only for their actual and necessary expenses and mileage in the performance of those duties, in accordance with sections 54-06-09, 44-08-04, and 11-10-15. Other persons performing election duties must also be paid for expenses and mileage in like manner and amounts. Members of election boards who attend the training sessions provided by section 16.1-05-03 must be paid at least twenty-five percent more than the state minimum wage determined in this section, during the time spent in the performance of their election duties.

**SECTION 5. AMENDMENT.** Section 16.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-15. Mandatory testing of electronic voting systems before election and before and after tabulation of ballots.** All electronic voting systems used in this state

must be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used, and before and after the counting of the ballots at each election. The testing must be done by the county auditor or his designee, and after each test, the testing materials, programs, and preaudited ballots must be sealed and retained in the same manner as paper ballots after an election. The test must be conducted by processing a preaudited group of ballot cards on which are recorded a predetermined number of valid votes for each candidate and measure, and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office, and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section. The test that is conducted before the election must be conducted at least one week before the election, and the district chairman of each political party having a candidate on the ballot must be sent notice of the test by the county auditor ~~by certified mail~~ at least one week before the test. The notice must state the time, place, and date of the test or tests, and that the district chairman or his designee may attend.

**SECTION 6. AMENDMENT.** Section 16.1-06-18 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-18. Delivery of ballots - Official stamp delivered.** At the meeting provided for in section 16.1-05-03, the county auditors shall deliver, or cause to be delivered, by mail or other reliable method, to the inspector of elections in each precinct the official ballots, if available. The ballots must be delivered in sealed packages marked plainly on the outside designating the number of ballots enclosed and the precinct for which the ballots are intended. The county auditor shall deliver or cause to be delivered to the inspector, or if that is impracticable, to one of the election judges of the precinct, a stamp and inepad for the purpose of stamping each ballot with the words "official ballot" and the name or number of the precinct, the name of the county, the date of the election, and providing for a blank line preceded by the word "initials" for the purpose of providing a space where the judge or inspector shall initial the ballot. The stamp and inepad are not required if that information is preprinted on the ballot. If the information is preprinted on the ballot, the name or number of the precinct may be replaced by the word "precinct" followed by a blank line where the judge or inspector shall write in the name or number of the precinct. The county auditor shall deliver or cause to be delivered a suitable seal for the purpose of wrapping and sealing the stamp and inepad at the close of the voting but before the counting of the ballots if a stamp is required. The county auditor also shall deliver or cause to be delivered a suitable seal, which has the name of the county inscribed thereon, for the purpose of sealing the wrapper containing the ballots as provided in section 16.1-15-08.

**SECTION 7. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-05. Time for applying for ballot.** At any time in an election year, any qualified elector expecting to be absent on election day as provided in section 16.1-07-01 may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application



form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine or is a qualified elector living outside the United States, may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to those electors eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election.

**SECTION 8. AMENDMENT.** Section 16.1-07-12 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box - Preserving.** At any time between the opening and closing of the polls on election day, the election judges of the relevant precinct first shall open the outer envelope and compare the signature on such application for an absent voter's ballot with the signature on the statement provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct and has not voted at the election, they shall open the absent voter's envelope in such manner as not to destroy the statement thereon. They shall take out the ballot or ballots contained therein without unfolding the same, or permitting the same to be opened or examined, and after endorsing stamping and initialing or initialing the same as other ballots are endorsed stamped and initialed or initialed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the election that the elector has voted. If the statement is found to be insufficient, or that the signatures do not correspond, or that the applicant is not then a duly qualified elector of the precinct, the vote may not be allowed, but without opening the absent voter's envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. The subsequent death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting such ballot.

**SECTION 9. AMENDMENT.** Section 16.1-08.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-01. Definitions.** As used in this chapter, unless the context otherwise plainly requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
2. "Candidate" means an individual whose name is presented for who seeks nomination for election or election to public office at any primary election whether the individual is actually nominated or not; an individual whose name is printed as a candidate on an official ballot used at any election; an individual who seeks election through write-in

~~votes; an individual who is soliciting or accepting campaign contributions for the individual's own political purpose; or an individual who has sought election to office and who is soliciting or accepting contributions to pay off any campaign debt or to raise money for any political purpose.~~

- 2+ 3. "Contribution" means a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to public office, of aiding or opposing the circulation or passage of a statewide initiative or referendum ~~petitions~~, petition or of promoting passage or defeat of a statewide initiated or referred measure. Contribution also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes, and includes funds received by a political committee which are transferred to that committee from another political committee or other source. This definition does not include:
- a. A loan of money from a bank or other lending institution made in the regular course of business.
  - b. Time spent by volunteer campaign or political party workers.
  - c. Money spent by a candidate on the candidate's own behalf.
  - d. Any money received from a district or state committee of a political party, as established pursuant to sections 16.1-03-06 and 16.1-03-08, except for contributions reported pursuant to section 16.1-08.1-03.
- 3+ 4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code.
5. "Expenditure" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or property, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
6. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
7. "Person" means an individual, partnership, committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
- 4+ 8. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures primarily for political purposes.
- 5+ 9. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political

subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.

6. 10. "Political purpose" or ~~"political purposes"~~ means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person.
7. 11. "Public office" means every statewide or legislative office to which persons can be elected by vote of the people under the laws of this state.

**SECTION 10. Political committee registration.** A political committee, other than a political party, and a person aiding or opposing a measure to be voted upon by the voters of the state shall register its name, address, and its agent's name and address with the secretary of state each year in which it receives any contribution. The registration must be completed within five days of the receipt of any contribution and must be submitted with a registration fee of five dollars.

**SECTION 11. AMENDMENT.** Section 16.1-08.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-02. Statement Contributions statement required of candidates - Contents - Additional statements.** Any candidate for a public office or any candidate who sought a public office or is seeking a public office and who is soliciting or accepting contributions for any political purpose, shall make and file a statement in accordance with this section. The statement must contain a detailed statement of all contributions received from each individual or political committee which exceed one hundred dollars.

The candidate shall include in the statement must include the name and mailing address of all contributors listed. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this chapter who contributed in excess of one hundred dollars to the candidate.

The statement required of a candidate must be filed with the secretary of state shall file the statement no later than five p.m. on the twelfth day prior to before the date of the election in which the candidate's name appears on the ballot or in which the candidate seeks election through write-in votes complete from the beginning of that calendar year or, if applicable, from the cutoff date for the previous statement, through the twentieth day prior to before the date of the election. A The candidate shall file a complete statement for the entire calendar year must be filed no later than five p.m. on the thirty-first day of January of the following year, regardless of whether the candidate's name appeared on the ballot for any office during that calendar year or whether the candidate did not seek election at any election through write-in votes. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the report must be filed no later than five p.m. on the next business day on which the office of the secretary of state is open.

The form of all statements required by this chapter must be as prescribed by the secretary of state. Statements of a legislative candidate must be filed in the office of the county auditor of the candidate's county of residence under the same limitations as apply to the filing of statements with the secretary of state. Statements

of state office candidates ~~and any other required statements~~ must be filed in the office of the secretary of state.

No candidate may be required to file any statement required by this chapter if the candidate has not received any contributions in excess of one hundred dollars during the calendar year.

**SECTION 12. AMENDMENT.** Section 16.1-08.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03. Contributions statement required of political parties.** Any political party that receives contributions in excess of one hundred dollars and contributes money to a candidate in excess of one hundred dollars shall ~~do one of the following:~~

- 1- ~~File a statement listing the total amount contributed to or expended on behalf of a candidate or candidates.~~
- 2- ~~File~~ file a statement containing a detailed list of all contributions received from an individual or political committee which exceed one hundred dollars in amount. The statement must include the name and mailing address of all contributors listed.

A yearend statement covering the entire calendar year must be filed with the secretary of state no later than ~~five p.m. on~~ the thirty-first day of January of the following year. A preelection statement must be filed no later than ~~five p.m. on~~ the twelfth day before any election at which the party has endorsed or will nominate a candidate and must be complete for from the beginning of that calendar year or, if applicable, from the cutoff date for the previous statement, through the twentieth day before the election. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the statement must be filed on the next available day on which the office of the secretary of state is open.

<sup>104</sup> **SECTION 13. AMENDMENT.** Section 16.1-08.1-03.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03.1. Statement Contributions statement required of persons promoting passage or defeat of initiated or referred measure - ~~Contents~~.** Any person who is soliciting or accepting contributions for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petitions petition or ~~of promoting passage or defeat of any statewide initiated or referred~~ measure at any election shall file a statement in accordance with this section if the person has received any contributions from a person in excess of one hundred dollars.

The statement must include the name and mailing address of all contributors ~~listed. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be~~

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<sup>104</sup> Section 16.1-08.1-03.1 was also amended by section 1 of Senate Bill No. 2354, chapter 208.

aggregated for the purposes of the statements required by this section who contributed in excess of one hundred dollars to the person.

The statement required of a person must be filed with the secretary of state no later than five p.m. on the twelfth day prior to the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election. A complete statement for the entire calendar year must be filed no later than five p.m. on the thirty-first day of January of the following year. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the report must be filed no later than five p.m. on the next business day on which the office of the secretary of state is open.

The secretary of state shall prescribe the form of all statements required by this section.

**SECTION 14. Campaign contributions by corporations, cooperative corporations, limited liability companies, and associations prohibited - Violation - Penalty.**

1. A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution:
  - a. To aid any political party, political committee, or organization.
  - b. To aid any corporation, limited liability company, or association organized or maintained for political purposes.
  - c. To aid any candidate for political office or for nomination to political office.
  - d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
  - e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.
2. This section does not prohibit the establishment, administration, and solicitation of contributions to a separate and segregated fund to be utilized for political purposes by a corporation, cooperative corporation, limited liability company, or association. It is unlawful for:
  - a. The person or persons controlling the fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilize money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilize money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund.
  - b. Any person soliciting an employee, stockholder, patron, or member for a contribution to the fund to fail to inform the employee or member of the political purposes of the fund at the time of the

solicitation or of the general political philosophy intended to be advanced through committee activities.

- c. Any person soliciting an employee or member for a contribution to the fund to fail to inform the employee or member, at the time of the solicitation, of the right to refuse to contribute without any reprisal.
  - d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed, and of amounts expended for political purposes.
  - e. Any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, limited liability company, or association maintaining the political committee.
  - f. Any expenditure, except a contract, promise, or agreement, express or implied, to make any expenditure, made for political purposes to be reported under this section before control of the expenditure has been released by the political committee.
3. All political committees formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of one hundred dollars in the aggregate made for political purposes with the secretary of state. A yearend statement covering the entire calendar year must be filed no later than the thirty-first day of the following year. A preelection statement must be filed no later than the twelfth day before any primary, special, or general election and must be complete from the beginning of the calendar year or, if applicable, from the cutoff date for the previous statement through the twentieth day before the election.
4. A person may not make a payment of that person's money or of another person's money to any other person for a political purpose in any name other than that of the person who supplies the money and a person may not knowingly receive the payment nor enter nor cause the payment to be entered in that person's account or record in any name other than that of the person by whom it actually was furnished.
5. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, limited liability company, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, limited liability company, or association funds or otherwise violates this section, it is prima facie evidence of a violation by the corporation, cooperative corporation, limited liability company, or association.
6. A violation of this section may be prosecuted in the county where the contribution is made or in any county in which it has been paid or distributed.
7. It is a class A misdemeanor for an officer, director, stockholder, manager, governor, member, attorney, agent, or representative of any

corporation, cooperative corporation, limited liability company, or association to violate this section, or to counsel or consent to any violation. Any person who solicits or knowingly receives any contribution in violation of this section is guilty of a class A misdemeanor.

8. Any officer, director, stockholder, manager, governor, member, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section is liable to the company, corporation, limited liability company, or association for the amount so contributed.

**SECTION 15.** Person not excused from testifying as to violation - Prosecution or penalty waived upon testifying. No person may be excused from attending and testifying or producing any books, papers, or other documents before any court upon any investigation, proceeding, or trial for a violation of any of the provisions of this chapter, upon the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or degrade the person. No person may be prosecuted nor subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person may testify or produce evidence, documentary or otherwise, and no testimony so given or produced may be used against the person in any criminal investigation or proceeding.

**SECTION 16.** Expenditures for other purposes - Report required. Nothing in this chapter may be construed to prohibit the exercise by corporations, cooperative corporations, limited liability companies, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, limited liability company, or association other than a "political purpose" as defined by this chapter. Any corporation, cooperative corporation, limited liability company, or association that spends money for the purpose of promoting passage or defeat of initiated or referred measures, other than a contribution to another person promoting passage or defeat of an initiated or referred measure, shall file a statement listing the total amount of money spent for that purpose. The statement must be filed with the secretary of state no later than the twelfth day prior to the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election.

**SECTION 17. AMENDMENT.** Section 16.1-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-06. Requirements** Contribution statement requirements. A statement required by this chapter to be filed with the secretary of state or county auditor must be:

1. Verified by the oath or affirmation of the person filing the statement, taken before any officer authorized to administer oaths.
2. Deemed properly filed when deposited in an established post office within the prescribed time, postage affixed, and directed to the secretary of state or county auditor, but in the event it is not received, a duplicate of the statement must be promptly filed upon notice by the secretary of state or county auditor of its nonreceipt.

3. Preserved by the secretary of state or county auditor for a period of four years from the date of filing. The statement is to be considered a part of the public records of ~~his~~ the secretary of state's or county auditor's office and must be open to public inspection.

If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state or county auditor is closed, the statement must be filed on the next available day on which the office of the secretary of state or county auditor is open. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this chapter.

**SECTION 18. AMENDMENT.** Section 16.1-08.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-07. Penalty.** Any Except as otherwise provided, any person who willfully violates any provision of this chapter is guilty of an infraction.

**SECTION 19. AMENDMENT.** Section 16.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-12-04. Certificates of nomination - Time and place of filing.**

1. ~~The following certificates of nomination must be filed with the secretary of state; with written notice of that filing filed with the county auditor of each county included within the district wherein the offices are to be elected:~~
  - a. ~~Certificates of nomination for nominees for offices to be filled by the qualified electors of the entire state;~~
  - b. ~~Certificates of nomination for nominees for offices to be filled by the qualified electors of any district greater than a county;~~
  - c. ~~Certificates of nomination for nominees for legislative offices must be filed with the secretary of state.~~
2. Certificates of nomination for nominees for county offices and legislative offices must be filed with the county auditor of the ~~respective counties in which the officers are to be elected~~ county in which the candidate resides. When a legislative district is composed of more than one county, the county auditor shall certify to the county auditors of the other counties comprising the legislative district the names of the candidates filing the certificates of nomination.
3. Certificates of nomination required to be filed with the secretary of state must, without regard to the means of delivery, be filed and in the actual possession of the ~~secretary of state~~ appropriate officer not later than four p.m. on the sixtieth day prior to the ~~general~~ day of election day.
4. Certificates of nomination required to be filed with the county auditor must, without regard to the means of delivery, be filed and in the actual possession of the county auditor not later than four p.m. on the sixtieth day prior to the general election day.



5. In the case of special elections called to fill vacancies, certificates of nomination must be filed and in the actual possession of the appropriate officer, regardless of the means of delivery, not later than four p.m. on the sixtieth day prior to the day of election.
6. The secretary of state and the several county auditors shall keep on file for six months all certificates of nomination filed with them under this chapter, and all certificates of nomination must be open to public inspection during regular business hours.

**SECTION 20. REPEAL.** Chapter 16.1-08 and sections 16.1-11-14 and 16.1-11-17 of the North Dakota Century Code are repealed.

Approved April 12, 1995  
Filed April 13, 1995

## CHAPTER 208

## SENATE BILL NO. 2354

(Senators Holmberg, W. Stenehjelm)  
(Representatives Christenson, Kliniske)

INITIATIVE AND REFERRAL CAMPAIGN  
CONTRIBUTION STATEMENTS

AN ACT to amend and reenact section 16.1-08.1-03.1 of the North Dakota Century Code, relating to campaign contribution statements filed by persons promoting passage or defeat of initiated or referred measures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>105</sup> SECTION 1. AMENDMENT. Section 16.1-08.1-03.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.1. Statement required of persons promoting passage or defeat of initiated or referred measure - Contents.

1. Any person who is soliciting or accepting ~~contributions~~ a contribution for the purpose of aiding the circulation of a statewide initiative or referendum ~~petitions~~ petition or of promoting passage or defeat of any statewide initiated or referred measure at any election shall file a statement in accordance with this section if the person has received any contributions from a person in excess of one hundred dollars. The statement must include the name and mailing address of all contributors listed. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this section.
2. A person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of any statewide initiated or referred measure may not accept a contribution of more than one hundred dollars from an individual who does not reside in this state or from an out-of-state political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person who contributed more than one hundred dollars of the contribution. The certified statement must also list the occupation, employer, and principal place of business for each person who contributed more than two hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or

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<sup>105</sup> Section 16.1-08.1-03.1 was also amended by section 13 of Senate Bill No. 2332, chapter 207.

referred measure must include this statement with the contribution statement required to be filed under subsection 1.

3. The statement required of a person under subsection 1 must be filed with the secretary of state no later than five p.m. on the twelfth day prior to the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election. A complete statement for the entire calendar year must be filed no later than five p.m. on the thirty-first day of January of the following year. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the report must be filed no later than five p.m. on the next business day on which the office of the secretary of state is open.
4. The secretary of state shall prescribe the form of all statements required by this section.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 209

### HOUSE BILL NO. 1432 (Representative Maragos)

#### PRESIDENTIAL PREFERENCE CONTEST

AN ACT to create and enact two new sections to chapter 16.1-11 and a new subdivision to subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the conduct of a presidential preference contest and exceptions from the definition of administrative agency; to amend and reenact sections 16.1-11-02, 16.1-11-03, 16.1-11-04, 16.1-11-07, 16.1-11-23, 16.1-11-34, and subsection 2 of section 16.1-12-02.2, relating to the date of the presidential preference contest; to provide an appropriation; to provide for application; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 16.1-11-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-02. Presidential preference ~~primary~~ contest - Time for holding.** In a presidential election ~~years~~ year, there must be conducted a presidential preference ~~primary concurrently with the statewide primary~~ contest on the last Tuesday in February of that year. The presidential preference contest may be used only to instruct delegates to a national political convention and may not further the electoral process for any other purpose. No other election or vote on a measure of any kind may be held in conjunction with the presidential preference contest.

**SECTION 2. AMENDMENT.** Section 16.1-11-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-03. Political parties authorized to conduct presidential preference ~~primary~~ contest.** Every political party entitled to a separate column ~~on the primary election ballot under section 16.1-11-30~~ is also entitled to conduct a presidential preference ~~primary as part of its primary election~~ contest. A political party subject to subsection 4 of section 16.1-11-30 shall meet the requirements of subsection 4 of section 16.1-11-30 by filing the petition with the secretary of state before four p.m. of the sixtieth day before the presidential preference contest.

**SECTION 3.** A new section to chapter 16.1-11 of the North Dakota Century Code is created and enacted as follows:

Presidential preference contest conduct - Mail ballot election. As applicable and except as otherwise provided in this chapter, the presidential preference contest must be governed by the requirements of this title applicable to primary elections, including deadlines for ballot preparation and election official appointments. The presidential preference contest may be conducted pursuant to the mail ballot election procedures established by chapter 16.1-11.1. The cost of the contest must be paid in the same manner as provided for a statewide special election under section 16.1-01-02.3.

**SECTION 4.** A new section to chapter 16.1-11 of the North Dakota Century Code is created and enacted as follows:

Presidential preference contest - Requirements. Notwithstanding any other provision of law, the secretary of state shall adopt rules relating to the presidential preference contest, including rules providing for the reduction of poll workers, the reduction of poll hours, the reduction of precincts, the arrangement of the names of candidates on the official ballot, the publication of the sample ballot, and open voting within cities or counties.

**SECTION 5. AMENDMENT.** Section 16.1-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-04. Presidential preference primary an additional election contest.** ~~The presidential preference primary provided for by sections 16.1-11-02, 16.1-11-03, 16.1-11-04, 16.1-11-07, 16.1-11-23, and 16.1-11-24 must be in addition to all other elections held on the date of the primary.~~ Unless specifically forbidden by national party rules, the delegates selected by political parties at a presidential preference contest are bound to cast their first ballots at the party national convention in such a manner that each candidate at the party's presidential preference primary contest receives a proportion of the total votes cast by the delegates equal to the proportion received by that candidate of the total votes cast for all candidates for president of that party at the primary contest. In computing the number of delegates a candidate may be entitled to on the first ballot, if party rules do not allow apportionment of a delegate and such an apportionment appears necessary because no candidate received more than five-tenths of a delegate, then that delegate must be assigned to the candidate receiving the highest number of votes in the primary election contest. If a candidate withdraws before the first ballot voting begins, delegates obligated to vote for that candidate on the first ballot ~~would be~~ are released from that obligation.

**SECTION 6. AMENDMENT.** Section 16.1-11-07 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-07. Presidential candidates on ballot - Filing time.** Presidential candidates, representing parties qualified to conduct a presidential preference primary contest, desiring to be on the presidential preference primary contest ballot shall file an affidavit, and either a certificate of endorsement signed by the chairman of the party's state committee, or a petition in the same form and with the same number of signatures as a candidate for state office. The certificate and affidavit, or petition and affidavit, must be filed with the secretary of state within the same time limits as state office candidates not more than seventy nor less than sixty days, and before four p.m. of the sixtieth day before the presidential preference contest, and for the purposes of the presidential preference primary contest only, political parties may file certificates for more than one presidential candidate. The secretary of state shall certify the names to the county auditors for ballot preparation.

**SECTION 7. AMENDMENT.** Section 16.1-11-23 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-23. Presidential preference primary contest ballots.** ~~Paper ballots for presidential preference primary elections must be combined with the primary election ballot, with each party's candidates in the presidential preference primary listed in the same columns as other candidates of that party. Machine or other voting system ballots must be prepared so as to place each party's candidates in the presidential preference primary with other candidates of that party, and must~~ The presidential preference contest ballot may allow for voting for only one of the candidates put forth by one party. Ballots must conform in form and style to other ballots as prescribed by the secretary of state and chapter 16.1-11.1.

**SECTION 8. AMENDMENT.** Section 16.1-11-34 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-34. Counting and canvassing of votes in presidential preference primary contest.** The votes cast in presidential preference ~~primaries~~ contests must be counted and canvassed as other votes, and after preparation of statements by the state canvassing board, the secretary of state shall certify the number of votes cast for each party candidate to the state chairman of each political party conducting a presidential preference primary contest.

<sup>106</sup> **SECTION 9. AMENDMENT.** Subsection 2 of section 16.1-12-02.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A person who intends to be a write-in candidate for president of the United States at the presidential preference primary election contest shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the primary election contest. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the election contest, the secretary of state shall certify the names of the presidential candidates to each county auditor as write-in candidates.

<sup>107</sup> **SECTION 10.** A new subdivision to subsection 1 of section 28-32-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

The secretary of state with respect to rules adopted for the presidential preference contest under section 4 of this Act.

**SECTION 11. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$275,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of conducting the presidential preference contest for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 12. APPLICATION.** This Act is not a statewide election for the purpose of a vote on a referred or initiated measure as provided in section 5 of article III of the Constitution of North Dakota. Any action by the North Dakota supreme court to the contrary renders this Act void.

**SECTION 13. EXPIRATION DATE.** Section 4 of this Act is effective through June 30, 1997, and after that date is ineffective.

Approved April 7, 1995  
Filed April 7, 1995

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<sup>106</sup> Section 16.1-12-02.2 was also amended by section 1 of Senate Bill No. 2453, chapter 210.

<sup>107</sup> Section 28-32-01 was also amended by section 1 of Senate Bill No. 2429, chapter 308; section 1 of Senate Bill No. 2405, chapter 309; and section 4 of House Bill No. 1089, chapter 313.

## CHAPTER 210

## SENATE BILL NO. 2453

(Senators Schobinger, B. Stenehjem)  
(Representatives Maragos, Poolman)

## CERTIFICATES OF CANDIDACY

AN ACT to amend and reenact section 16.1-12-02.2 of the North Dakota Century Code, relating to certificates of candidacy by write-in candidates.

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

<sup>108</sup> SECTION 1. AMENDMENT. Section 16.1-12-02.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**16.1-12-02.2. Counting of write-in votes - Certificate of candidacy by write-in candidates for president of the United States.**

1. An election board or canvassing board is not required to count any write-in vote for any:
  - a. Person who is required to file a certificate of write-in candidacy under this section but who has not filed a certificate of candidacy and been certified as a write-in candidate.
  - b. Fictitious person, nonperson, or person clearly not eligible to qualify for the office for which the vote was cast.
  - c. Statement concerning the candidates.
2. A person who intends to be a write-in candidate for president of the United States at the presidential preference primary election or for statewide or judicial district office at any election shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the ~~primary~~ election. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the election, the secretary of state shall certify the names of the ~~presidential~~ candidates to each county auditor as write-in candidates.
3. A person who intends to be a write-in candidate at the general election for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also

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<sup>108</sup> Section 16.1-12-02.2 was also amended by section 9 of House Bill No. 1432, chapter 209.

include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.

4. A person who intends to be a write-in candidate for any other office shall file a certificate of write-in candidacy with the election officer with whom the candidate would otherwise file to have the candidate's name placed on the ballot. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election. A certificate under this subsection is not required when no names will appear on the ballot for that office.

Approved April 11, 1995

Filed April 12, 1995



**CHAPTER 211****HOUSE BILL NO. 1242**

(Representatives Kretschmar, Lloyd, Shide)

**DEFEATED PRIMARY CANDIDATE ELIGIBILITY**

AN ACT to amend and reenact section 16.1-13-06 of the North Dakota Century Code, relating to the eligibility of a candidate defeated at a primary election to have the candidate's name placed on the general election ballot.

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

**SECTION 1. AMENDMENT.** Section 16.1-13-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-06. Defeated primary candidate ineligible to have name printed on general ballot - Exception. A person Except to fill a vacancy occurring on the ballot, an individual who was a candidate for nomination by any party at any primary election in any year and who was defeated for the nomination may not have ~~his or her~~ that individual's name printed upon the official ballot at the ensuing general election for the same office.

Approved March 6, 1995

Filed March 6, 1995

# FIRES

## CHAPTER 212

### SENATE BILL NO. 2149

(Political Subdivisions Committee)  
(At the request of the Attorney General)

## FIRE AND SAFETY INSPECTIONS

AN ACT to create and enact a new section to chapter 18-01 of the North Dakota Century Code, relating to the state fire marshal authorizing fire and safety inspections to be performed by other agencies of government; and to amend and reenact section 18-01-02, subsection 3 of section 18-01-05.1, and section 23-09.3-04 of the North Dakota Century Code, relating to the duties of the state fire marshal, release of information to the state fire marshal or a law enforcement officer, and fire safety inspections of basic care facilities.

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

**SECTION 1. AMENDMENT.** Section 18-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**18-01-02. Duties of fire marshal and deputy state fire marshal marshals.** The state fire marshal and his deputy ~~or deputies shall~~ state fire marshals may enforce all the laws of the state providing for:

1. The prevention of fires.
2. The storage, sale, and use of combustibles and explosives.
3. The installation and maintenance of automatic or other fire alarms and fire extinguishing equipment.
4. The means and adequacy of exits in case of fires from ~~churches, schools, hospitals, hotels, halls, theaters, amphitheaters, and all other public places and other places~~ in which ~~numbers of~~ fifty or more persons congregate from time to time for any purpose.
5. The suppression of arson and the investigation of the cause and origin of fires.
6. The education of the citizens of North Dakota on the hazards of fire, through organized programs.

**SECTION 2.** A new section to chapter 18-01 of the North Dakota Century Code is created and enacted as follows:

Delegation of authority. The state fire marshal may delegate to the state department of health or any political subdivision the authority to conduct investigations, surveys, or inspections, and the authority to enforce compliance where violations are discovered, which become the responsibility of the state department of

health or political subdivision and otherwise would be the responsibility of the fire marshal. Any delegation to the state department of health is limited to authority over basic care facilities. Any political subdivision that meets the fire marshal's minimum standard requirements may be delegated authority under this section. A political subdivision may refuse the delegation.

**SECTION 3. AMENDMENT.** Subsection 3 of section 18-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, ~~then, for the purpose of having such fire loss investigated by the state fire marshal, or a law enforcement officer as defined by section 12.1-01-04,~~ the company shall, in writing, notify the state fire marshal, or a law enforcement officer as defined by section 12.1-01-04, and provide any or all material developed from the company's inquiry into the fire loss.

**SECTION 4. AMENDMENT.** Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.3-04. Department to establish standards - Licensing - Inspection - Prosecute violations.** It is the duty of the department to establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department shall prosecute all violations of this chapter. ~~Upon request of the department, the state fire marshal shall inspect any place for which a license is applied or issued and shall report these findings to the department.~~

Approved April 13, 1995

Filed April 18, 1995

## CHAPTER 213

## SENATE BILL NO. 2176

(Finance and Taxation Committee)

(At the request of the Office of Management and Budget)

## INSURANCE TAX ALLOCATION METHODS

AN ACT to amend and reenact section 18-04-05 and subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to payments from the insurance tax distribution fund and allocation of the insurance premium tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-04-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-04-05. Amount due cities, rural fire protection districts, or rural fire departments - ~~Certificate of Payments by~~ commissioner of insurance to ~~office of management and budget~~. The commissioner of insurance shall compute the amounts due to the cities, townships city fire departments, certified rural fire departments, or fire protection districts entitled to benefits under this chapter on or before September first of each year; ~~in the following manner:~~

1. ~~To a.~~ The commissioner of insurance shall allocate one-half of the biennial legislative appropriation for distribution under this section to each eligible city not within a fire protection district, a sum equal to eighty-four percent of the tax collected on premiums received by insurance companies pursuant to section 26.1-03-17 issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property in the city.
2. ~~To~~ each rural fire protection district organized under this title or, and each rural fire department certified by the state fire marshal, a sum equal to eighty-four percent of the tax collected on and pay the amount allocated in September of each year. The allocation must be made in proportion to the amount of insurance company premiums received by insurance companies pursuant to section 26.1-03-17 issuing for policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance on property within the city, rural fire protection district, or property area served by the certified rural fire department to the total of those premiums for those policies in the state.

Payments by the commissioner of insurance must be distributed in September of each year. If the appropriation is less than the amount determined by applying the formula pursuant to this section, the commissioner of insurance by proration shall provide each eligible recipient the same proportion of the appropriation as the percent of the total funds it would have received pursuant to such formula.

<sup>109</sup> SECTION 2. AMENDMENT. Subsection 1 of section 26.1-03-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. ~~Eighty-four percent of the revenue from the tax imposed upon policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance~~ Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 ~~and the remaining sixteen percent as well as revenue from the tax imposed upon policies for any other line of insurance but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 in any fiscal year.~~ Collections from this tax exceeding the amount deposited in the insurance tax distribution fund each fiscal year must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.

Approved April 4, 1995

Filed April 4, 1995

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<sup>109</sup> Section 26.1-03-17 was also amended by section 17 of Senate Bill No. 2070, chapter 54.

## CHAPTER 214

## HOUSE BILL NO. 1116

(Industry, Business and Labor Committee)  
(At the request of the Attorney General)

## LIQUEFIED PETROLEUM GAS RULES

AN ACT to amend and reenact section 18-09-02, subsection 2 of section 23-13-02.3, and section 23-13-16 of the North Dakota Century Code, relating to liquefied petroleum gas regulations, self-service motor fuel dispensing facilities, and limitations on aboveground petroleum storage tanks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 18-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**18-09-02. Fire marshal to make rules.** The state fire marshal shall ~~make and promulgate regulations~~ adopt rules setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storage, handling, transporting by tank truck, tank trailer, and utilizing liquefied petroleum gases and specifying the odorization of said gases and the degree thereof. ~~Said regulations~~ The rules must be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials, and must be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. ~~Said regulations~~ The rules must substantially comply with ~~the 1969 national standards of the national fire protection association~~ the 1969 national standards of the national fire protection association for the design, installation, construction of containers, and pertinent equipment for the handling and storage of liquefied petroleum gases, such as those promulgated by the national fire protection association.

**SECTION 2. AMENDMENT.** Subsection 2 of section 23-13-02.3 of the North Dakota Century Code is amended and reenacted as follows:

2. At all times during the operation of a self-service motor fuel dispensing facility, the owner, operator, employee, or authorized attendant shall be on the premises and shall supervise the operation thereof. The person attending the operation shall refuse service to anyone who appears for any reason to be unable to dispense motor fuel safely. If, however, the filling station provides pump island service to its customers, the attendant must provide refueling services to any mobility-impaired person stopped at a self-service motor fuel dispensing unit who requests assistance and whose vehicle displays a certificate issued under section 39-01-15. No additional cost may be charged to a mobility-impaired person because of the service. This subsection does not apply to any self-service motor fuel dispensing unit equipped with a card-operated, credit card-operated, ~~cash-operated~~, or key-operated dispensing device. Self-service motor fuel dispensing units equipped with a card-operated, credit card-operated, ~~cash-operated~~, or key-operated dispensing device are subject to and must conform with the emergency controls, emergency contact, and fire control standards as specified by the national fire protection association. In addition, the operating instructions, warning signs, and emergency instructions specified in the standards of the

national fire protection association must be conspicuously posted in the dispensing area.

**SECTION 3. AMENDMENT.** Section 23-13-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-13-16. Aboveground storage tanks permitted - Limitations.** Subject to local zoning ordinances, a business selling petroleum products ~~at retail~~ for dispensing into motor vehicles may utilize aboveground tanks with a maximum capacity not exceeding nineteen thousand gallons [71922.6 liters] for the storage of petroleum products. No business selling petroleum products ~~at retail~~ for dispensing into motor vehicles may use ~~more than five~~ aboveground storage tanks with an aggregate capacity of more than ninety-five thousand gallons [359613 liters] for the storage of petroleum products at one location.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 215

### SENATE BILL NO. 2296

(Senators B. Stenehjem, Lips, Nalewaja)  
(Representatives Keiser, Martinson, Nicholas)

## FIREFIGHTERS' RETIREMENT BENEFITS

AN ACT to create and enact two new sections to chapter 18-11 and a new subsection to section 18-11-15 of the North Dakota Century Code, relating to commencement of benefit payments, vesting, and benefit limitations under the alternate firefighters relief association plan; and to amend and reenact sections 18-11-13 and 18-11-19 of the North Dakota Century Code, relating to the alternate firefighters relief association plan state fund and treatment of forfeitures under the alternate firefighters relief association plan.

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

**SECTION 1. AMENDMENT.** Section 18-11-13 of the North Dakota Century Code is amended and reenacted as follows:

18-11-13. Association state fund - Expenditures - Investment. The moneys received by the association must be kept in a trust fund known as the association state fund. The assets of the fund must be held in trust. No part of the assets of the fund may be used for or diverted to purposes other than for the exclusive benefit of the members, their spouses, or the members' beneficiaries prior to the satisfaction of all liabilities of the fund with respect to them, provided that the fund may be used to pay reasonable administration expenses of the association. The moneys received from the state, city, or employee's salary contribution must be deposited in the association state fund and may be expended only for the purposes set forth in section 18-11-14. The relief association shall manage and control all moneys that come into its possession. Moneys in the fund may be invested in bonds of the United States of America, bonds of the state of North Dakota or any other state, in certificates of indebtedness of the state of North Dakota, in any bonds or certificates of indebtedness of any political subdivision of the state of North Dakota which constitute the general obligations of the issuing tax authority, or the Bank of North Dakota or any other bank or savings and loan association which is insured by the United States of America. The board may also invest all or part of the moneys in the fund in other investments by selecting a funding agent or agents and establish an investment agreement contract. The contract must authorize the funding agent or agents to hold and invest those moneys for the board. The moneys invested must be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed.

<sup>110</sup> **SECTION 2.** A new subsection to section 18-11-15 of the North Dakota Century Code is created and enacted as follows:

Benefits with respect to a member may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code;

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<sup>110</sup> Section 18-11-15 was also amended by section 1 of Senate Bill No. 2297, chapter 216.



26 U.S.C. 415 for governmental plans. This section does not constitute an election under section 415(b)(10)(C) of the Internal Revenue Code; 26 U.S.C. 415(b)(10)(C).

SECTION 3. A new section to chapter 18-11 of the North Dakota Century Code is created and enacted as follows:

Commencement of benefits. Notwithstanding any provision of this plan to the contrary, benefits payable under the plan are subject to the following:

1. A member's benefit may not commence later than April first of the calendar year following the latter of the calendar year in which the member attains age seventy and one-half or the calendar year in which the member terminates employment. In any case in which a lump sum death benefit is payable to a deceased member's beneficiary, the benefit must be paid no later than sixty days following the member's date of death.
2. The member's entire interest in the plan must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and the designated beneficiary.
3. When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.
4. When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within five years of the member's death. The five-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.
5. The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code; 26 U.S.C. 401(a)(9)(G).

SECTION 4. A new section to chapter 18-11 of the North Dakota Century Code is created and enacted as follows:

Vesting on plan termination. If the retirement plan established under this chapter is terminated, the accrued benefits of each member immediately become one hundred percent vested and nonforfeitable to the extent funded.

SECTION 5. AMENDMENT. Section 18-11-19 of the North Dakota Century Code is amended and reenacted as follows:

18-11-19. Fund based upon actuarial tables - Treatment of forfeitures.

1. The pension fund must be based upon actuarial tables and the association ~~shall have the authority~~ is authorized to engage an actuary for studies of the plan when ~~such a practice~~ is deemed necessary by the association.

2. As required by section 401(a)(8) of the Internal Revenue Code; 26 U.S.C. 401(a)(8), no part of any benefit forfeitures of a member resulting from the application of any provisions of this chapter may be applied to increase the benefits a member would otherwise receive.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 216

## SENATE BILL NO. 2297

(Senators B. Stenehjem, Lips, Nalewaja)  
(Representatives Keiser, Martinson, Nicholas)

## FIREFIGHTERS' PENSIONS

AN ACT to amend and reenact section 18-11-15 of the North Dakota Century Code, relating to qualifications for service pensions under the alternate firefighters relief association plan; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>111</sup> SECTION 1. AMENDMENT. Section 18-11-15 of the North Dakota Century Code is amended and reenacted as follows:

18-11-15. Service pensions - Qualifications.

1. A monthly service pension must be paid to members of the association with the following qualifications:

Years of service	Years of age at retirement	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

2. All Except for members participating in a firefighters relief association paying a monthly service pension to members of the association under subsection 4, all members must serve twenty years before they are eligible for a service pension. Members participating in a firefighters relief association paying a monthly service pension to members of the association under subsection 4 must serve ten years before they are eligible for a service pension. However, any member who has twenty years of service or ten years of service with a firefighters relief association paying a monthly service pension to members of the association under subsection 4, and who has not attained retirement age

<sup>111</sup> Section 18-11-15 was also amended by section 2 of Senate Bill No. 2296, chapter 215.

may retire from the department without forfeiting the right to a service pension. The association, in its bylaws, may establish a retirement age of not less than fifty years, at which time the service pension ~~shall become~~ becomes payable. This retirement age may be established for all firefighters or classes of firefighters by birth dates. A person who has served twenty years or ten years with a firefighters relief association paying monthly service pensions to members of the association under subsection 4 or more and who is separated from service must, upon application, be placed on the deferred pension roll of the association, and after reaching retirement age, the association shall, upon application therefor, pay the service pension from the date the member attains eligibility at a rate of forty percent of the monthly salary of a first-class firefighter as determined on January first of the year in which the pension is paid. Any person making such application waives all other rights, claims, or demands against the association for any cause, except those causes that may have arisen from, or that may be attributable to, the person's service on the fire department.

3. With the consent of the governing body of the city involved, and in substitution for the pension payment schedule provided in subsection 1, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amounts:

Years of service	Years of age	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

4. With the consent of the governing body of the city involved, and in substitution for the pension payment schedule provided in subsection 1 or 3, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amounts:

Years of service	Years of age	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
<u>10</u>	<u>50</u>	<u>20%</u>
<u>11</u>	<u>50</u>	<u>22%</u>
<u>12</u>	<u>50</u>	<u>24%</u>
<u>13</u>	<u>50</u>	<u>26%</u>
<u>14</u>	<u>50</u>	<u>28%</u>
<u>15</u>	<u>50</u>	<u>30%</u>

<u>16</u>	<u>50</u>	<u>32%</u>
<u>17</u>	<u>50</u>	<u>34%</u>
<u>18</u>	<u>50</u>	<u>36%</u>
<u>19</u>	<u>50</u>	<u>38%</u>
<u>20</u>	<u>50</u>	<u>40%</u>
<u>21</u>	<u>51</u>	<u>42%</u>
<u>22</u>	<u>52</u>	<u>44%</u>
<u>23</u>	<u>53</u>	<u>46%</u>
<u>24</u>	<u>54</u>	<u>48%</u>
<u>25</u>	<u>55</u>	<u>50%</u>
<u>26</u>	<u>56</u>	<u>52%</u>
<u>27</u>	<u>57</u>	<u>54%</u>
<u>28</u>	<u>58</u>	<u>56%</u>
<u>29</u>	<u>59</u>	<u>58%</u>
<u>30</u>	<u>60</u>	<u>60%</u>

**SECTION 2. APPLICATION OF ACT.** This Act applies to benefits payable after January 1, 1992.

Approved March 24, 1995

Filed March 27, 1995

# FOODS, DRUGS, OILS, AND COMPOUNDS

## CHAPTER 217

### HOUSE BILL NO. 1403

(Representative Stenehjem)

(Senators W. Stenehjem, B. Stenehjem)

### CONTROLLED SUBSTANCES

AN ACT to amend and reenact subsection 4 of section 19-03.1-01, section 19-03.1-01.1, subsection 5 of section 19-03.1-05, subsection 14 of section 43-15-10, and subsection 4 of section 54-12-14 of the North Dakota Century Code, relating to the controlled substances board and the state board of pharmacy and schedule I controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 4 of section 19-03.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Board" means the ~~North Dakota controlled substances~~ state board of pharmacy.

<sup>112</sup> **SECTION 2. AMENDMENT.** Section 19-03.1-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01.1. ~~Controlled substances board~~ Board - Agreements - Gifts - Expenses.

1. There is hereby established a ~~North Dakota controlled substances board consisting of the attorney general or the attorney general's designee, the director of the forensic sciences division of the state department of health and consolidated laboratories or the director's designee, the chairperson of the state board of medical examiners or the chairperson's designee, a member appointed by the governor, and the executive secretary of the state board of pharmacy or the executive secretary's designee. The executive secretary of the state board of pharmacy, or the executive secretary's designee, must be the chairperson of the board.~~
2. In carrying out its duties under this chapter, the board shall consult with representatives of each of the following interests: board of medical examiners, board of dental examiners, board of registry in podiatry,

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<sup>112</sup> Section 19-03.1-01.1 was also amended by section 2 of House Bill No. 1058, chapter 243.

board of veterinary medical examiners, board of nursing, the college of pharmacy, and the school of medicine.

- ~~3~~ 2. To carry out its duties under this chapter, the board may enter into agreements or memorandums of understanding with the interests named in subsection 2 1. Additionally, the board may contract for and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources. The income received from these sources must be spent for the purpose designated in the gift, grant, or donation.
- ~~4~~. ~~Members of the board may not receive any compensation for their service on the board; but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided for state employees.~~

**SECTION 3. AMENDMENT.** Subsection 5 of section 19-03.1-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):
- a. Alpha-ethyltryptamine, its optical isomers, salts and salts of isomers (also known as etryptamine;  $\alpha$ -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
  - b. 4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy- $\alpha$ -methylphenethylamine; 4-bromo-2, 5-DMA).
  - c. 4-bromo-2, 5-dimethoxyphenethylamine (also known as 4-bromo-2, 5-DMPEA).
  - ~~d~~ d. 2, 5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy- $\alpha$ -methylphenethylamine; 2, 5-DMA).
  - ~~e~~ e. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
  - ~~e~~ f. 4-methoxyamphetamine (also known as 4-methoxy- $\alpha$ -methylphenethylamine; paramethoxyamphetamine; PMA).
  - ~~f~~ g. 5-methoxy-3,4-methylenedioxy-amphetamine.
  - ~~g~~ h. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy- $\alpha$ -methylphenethylamine; "DOM" and "STP").
  - ~~h~~ i. 3,4-methylenedioxy amphetamine.
  - ~~i~~ j. 3,4-methylenedioxymethamphetamine (also known as MDMA).

- †† k. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl- $\alpha$ -methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA.
- †† l. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy- $\alpha$ -methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA.
- †† m. 3,4,5-trimethoxy amphetamine.
- †† n. Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
- †† o. Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).
- †† p. Dimethyltryptamine (also known as DMT).
- †† q. Hashish.
- †† r. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).
- †† s. Lysergic acid diethylamide.
- †† t. Marijuana.
- †† u. Mescaline.
- †† v. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
- †† w. Peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts).
- †† x. N-ethyl-3-piperidyl benzilate.
- †† y. N-methyl-3-piperidyl benzilate.
- †† z. Psilocybin.
- †† aa. Psilocyn.
- †† bb. Tetrahydrocannabinols (synthetic) equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
- (1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.



- (2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.
- (3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- ~~bb.~~ cc. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).
- ~~ee.~~ dd. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).
- ~~dd.~~ ee. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl analog of phencyclidine; TCPy, TCP).
- ~~ee.~~ ff. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).

<sup>113</sup> SECTION 4. AMENDMENT. Subsection 14 of section 43-15-10 of the North Dakota Century Code is amended and reenacted as follows:

- 14. To ~~make~~, adopt, amend, and repeal rules ~~as may be deemed determined~~ necessary by the board ~~from time to time~~ for the proper administration and enforcement of this chapter, chapter 19-02.1 as that chapter pertains to drugs, subject to approval of the director of the state department of health and consolidated laboratories, and chapter 19-03.1; ~~subject to approval of the controlled substances board.~~

SECTION 5. AMENDMENT. Subsection 4 of section 54-12-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 4. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state ~~controlled substances board~~ of pharmacy or a law enforcement agency.

Approved March 6, 1995

Filed March 6, 1995

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<sup>113</sup> Section 43-15-10 was also amended by section 2 of Senate Bill No. 2163, chapter 405, and section 2 of House Bill No. 1058, chapter 243.

**CHAPTER 218****SENATE BILL NO. 2278**

(Senators Traynor, Krebsbach)  
(Representatives Kunkel, Nicholas)

**CONTROLLED SUBSTANCE USE BY PERSONS IN  
INTRACTABLE PAIN**

AN ACT to provide for the care and treatment of persons with intractable pain by the use of controlled substances.

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

**SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

1. "Board" means the state board of medical examiners.
2. "Intractable pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts.
3. "Physician" means a physician licensed by the board.

**SECTION 2. Prescription or administration of drugs by physician.** Notwithstanding any other provision of law, a physician may prescribe or administer controlled substances to a patient in the course of the physician's treatment of the patient for intractable pain. A physician shall keep records of purchases and disposals of controlled substances prescribed or administered under this section. The records must include the date of purchase, the date of sale or administration by the physician, the name and address of the patient, and the reason for the prescribing or the administering of the substances to the patient.

**SECTION 3. Restriction by hospital or health care facility of prescribed drug use prohibited.** No hospital or health care facility may forbid or restrict the use of controlled substances when prescribed or administered by a physician having staff privileges at that hospital or health care facility for a patient diagnosed and treated by a physician for intractable pain.

**SECTION 4. Disciplinary action for prescribing or administering drug treatment prohibited.** The board may not discipline a physician for prescribing or administering controlled substances in the course of treatment of a patient for intractable pain under this Act.

**SECTION 5. Application.** This Act does not apply to a person being treated by a physician for chemical dependency because of the person's use of controlled substances. This Act does not authorize a physician to prescribe or administer controlled substances to a person the physician knows is using controlled substances for nontherapeutic purposes. A person to whom controlled substances are prescribed or administered for intractable pain is not exempt from section 39-08-01 or 39-20-04.1.

**SECTION 6. Cancellation, revocation, or suspension of physician's license.**

This Act does not limit the authority of the board to cancel, revoke, or suspend the license of any physician who:

1. Prescribes or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.
2. Fails to keep complete and accurate records of purchases and disposals of controlled substances listed in chapter 19-03.1.
3. Writes false or fictitious prescriptions for controlled substances scheduled in chapter 19-03.1.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 219

### SENATE BILL NO. 2075

(Legislative Council)  
(Interim Natural Resources Committee)  
(Senator Urlacher)  
(Representatives Brown, Hanson, Guleson)

## CHEMICAL AND FEED LAW ADMINISTRATION

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to the consolidated laboratories function of the state department of health and consolidated laboratories; to amend and reenact section 19-13.1-01, subsections 2 and 12 of section 19-13.1-02, sections 19-13.1-03, 19-13.1-06, subsections 5 and 6 of section 19-13.1-07, subsection 4 of section 19-13.1-08, sections 19-13.1-09, 19-13.1-10, 19-13.1-11, 19-13.1-12, 19-13.1-13, 19-13.1-14, 19-14-02, subsections 3 and 4 of section 19-14-03, sections 19-14-04, 19-14-05, 19-14-06, 19-14-07, 19-18-02, 19-18-02.2, subsections 1 and 3 of section 19-18-03, sections 19-18-04, 19-18-04.1, subsections 2 and 3 of section 19-18-04.2, sections 19-18-05, 19-18-06, 19-18-06.1, subsections 1 and 3 of section 19-18-07, sections 19-18-08, 19-18-10, 19-18-11, 19-20.1-01, subsections 6, 13, and 17 of section 19-20.1-02, sections 19-20.1-03, 19-20.1-03.1, 19-20.1-03.2, 19-20.1-03.3, 19-20.1-03.4, subsections 1 and 4 of section 19-20.1-04, sections 19-20.1-06, 19-20.1-07, 19-20.1-08, 19-20.1-10, 19-20.1-11, 19-20.1-12, subsections 3 and 4 of section 19-20.1-13, sections 19-20.1-14, 19-20.1-15, 19-20.1-16, and 19-20.1-17 of the North Dakota Century Code, relating to transferring administration of commercial feed, livestock medicine, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws from the state department of health and consolidated laboratories to the commissioner of agriculture; and to repeal section 19-18-01 of the North Dakota Century Code, relating to the short title of the Insecticide, Fungicide, and Rodenticide Act of 1947.

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

<sup>114</sup> **SECTION 1. AMENDMENT.** Section 19-13.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**19-13.1-01. Enforcing official.** This chapter must be administered by the state department of health and consolidated laboratories commissioner of agriculture, hereinafter referred to as the department commissioner.

**SECTION 2. AMENDMENT.** Subsections 2 and 12 of section 19-13.1-02 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds when not adulterated within the

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<sup>114</sup> Section 19-13.1-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

meaning of section 19-13.1-07, which are distributed for use as feed or for mixing in feed. The department commissioner, by rule, may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 19-13.1-07.

12. "Official sample" means any sample of feed taken by the department commissioner and designated as "official" by the department commissioner.

<sup>115</sup> **SECTION 3. AMENDMENT.** Section 19-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-13.1-03. Registration and license.**

1. Each pet food and specialty pet food must be registered before being distributed in this state. The application for registration must be submitted on forms furnished by the department commissioner. The application must be accompanied by a label and any other printed matter describing each product and the registration fee of twenty-five dollars per product. Upon approval by the department commissioner, a certificate of registration must be furnished to the applicant. Registrations are not transferable. All registrations expire on December thirty-first of each year. Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product.
2. A distributor is not required to register any brand of pet food or specialty pet food that is already registered under this chapter by another person.
3. Each person who manufactures commercial feed or whose name appears on the label of a commercial feed, other than pet food or specialty pet food, shall obtain a feed manufacturer's license from the department commissioner. Each person who sells commercial feed, other than pet food or specialty pet food, at retail, shall obtain a feed retailer's license from the department commissioner. The license application must be on forms furnished by the department commissioner and must be accompanied by a fee of fifty dollars for feed manufacturers or twenty-five dollars for feed retailers. If a manufacturer is also a retailer of feed, the retail license is waived. A feed retailer's license must be obtained for each location used by the retailer. All licenses expire on December thirty-first of each year. Licenses are not transferable. License renewal applications received after January thirty-first may be assessed a penalty fee of ten dollars for retailers and twenty dollars for manufacturers. This subsection does not apply to any person who custom manufactures feed only for another person at that person's request and for that person's own use.

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<sup>115</sup> Section 19-13.1-03 was also amended by section 1 of House Bill No. 1149, chapter 220.

4. Each feed manufacturer required to be licensed under this chapter shall submit and maintain a current label file of all the feeds distributed in the state with the department commissioner.
5. The department commissioner may refuse to register or license any product or applicant not in compliance with the provisions of this chapter and to cancel any registration or license subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration or license may be refused or canceled until the registrant or licensee has been given opportunity to be heard before the department commissioner and to amend the application in order to comply with the requirements of this chapter.

<sup>116</sup> **SECTION 4. AMENDMENT.** Section 19-13.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**19-13.1-06. Inspection fees.** There must be paid to the department commissioner for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain, and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the thirty-first day of January of each year, an annual statement under oath, setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding year; and upon filing such statement shall pay the inspection fee. When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee.
2. Keep such records as may be necessary or required by the department commissioner to indicate accurately the tonnage of commercial feed distributed in this state, and the department commissioner has the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

**SECTION 5. AMENDMENT.** Subsections 5 and 6 of section 19-13.1-07 of the North Dakota Century Code are amended and reenacted as follows:

5. If it contains viable weed seeds in amounts exceeding the limits which the department commissioner shall establish by rule.
6. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to

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<sup>116</sup> Section 19-13.1-06 was also amended by section 2 of House Bill No. 1149, chapter 220.

current good manufacturing practice rules adopted by the department commissioner to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess.

**SECTION 6. AMENDMENT.** Subsection 4 of section 19-13.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4. If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless ~~such the~~ commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rules of the department commissioner; in the adopting of ~~such the~~ rules the department commissioner shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.

**SECTION 7. AMENDMENT.** Section 19-13.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**19-13.1-09. Inspection, sampling, analysis.**

1. For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the department commissioner, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized to enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and to inspect at reasonable times and within reasonable limits and in a reasonable manner, ~~such the~~ factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice rules established under subsection 6 of section 19-13.1-07.
2. A separate notice must be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be so notified.
3. If the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the officer or employee shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.
4. If the owner, or agent of the owner, of any factory, warehouse, or establishment described in subsection 1, refuses to admit the officer or agent to inspect in accordance with this section, the department

commissioner is authorized to obtain a warrant from any state court directing the owner or the owner's agent to submit the premises described in the warrant to inspection.

5. Any agent of the department commissioner is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds to enforce this chapter.
6. Sampling and analysis must be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.
7. The results of all analyses of official samples must be forwarded by the department commissioner to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the registrant may request a portion of the sample concerned within thirty days following receipt of the analysis.
8. In determining for administrative purposes whether a commercial feed is deficient in any component, the department commissioner must be guided by the official sample obtained and analyzed as provided for in this chapter.

**SECTION 8. AMENDMENT.** Section 19-13.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**19-13.1-10. Rules.**

1. The department commissioner is charged with the enforcement of this chapter, and may adopt such reasonable rules as may be necessary to efficiently administer this chapter. When adopting any rules under the authority of this section, the department commissioner shall follow the procedures provided for in chapter 28-32. Publicity concerning the public hearing must be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.
2. The official definitions of feed ingredients and official feed terms adopted and published by the association of American feed control officials and any amendments or supplements thereto may be adopted by rule as the official definitions.

**SECTION 9. AMENDMENT.** Section 19-13.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**19-13.1-11. Detained commercial feeds.** When the department commissioner has reasonable cause to believe any lot of commercial feed is being distributed in violation of ~~any of the provisions~~ of this chapter or of any of the prescribed regulations under this chapter, the department commissioner may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department commissioner or the court. The department commissioner shall release the lot of commercial feed so withdrawn when ~~said~~ the provisions and rules have been complied with. If compliance is not obtained within thirty days, the



~~department commissioner~~ may begin, or upon request of the distributor shall begin, proceedings for condemnation.

Any lot of commercial feed not in compliance with ~~said the~~ provisions and regulations is subject to seizure on complaint of the ~~department commissioner~~ to a court of competent jurisdiction in the area in which ~~said the~~ commercial feed is located. ~~In the event~~ If the court finds the ~~said~~ commercial feed to be in violation of this chapter and orders the condemnation of ~~said the~~ commercial feed, it must be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance may the disposition of ~~said the~~ commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of ~~said the~~ commercial feed or for permission to process or relabel ~~said the~~ commercial feed to bring it into compliance with this chapter.

<sup>117</sup> SECTION 10. AMENDMENT. Section 19-13.1-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-12. Penalties.

1. Any person convicted of violating ~~any of the provisions of~~ this chapter or the rules issued thereunder or who ~~shall impede, obstruct, hinder impedes, obstructs, hinders, or otherwise prevent prevents or attempt attempts~~ to prevent the ~~department commissioner~~ from performing ~~its the commissioner's~~ duties in connection with the provisions of this chapter, ~~shall be is~~ guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the ~~director of the chemistry division of the department of health and consolidated laboratories person performing the analysis, or the director's that person's~~ authorized agent, ~~shall must~~ be accepted as prima facie evidence of the composition.
2. ~~Nothing in this This~~ chapter ~~may be construed as requiring does not~~ require the ~~department commissioner~~ to seek prosecution or the institution of seizure proceedings based on minor violations of the chapter when the ~~department commissioner~~ deems that the public interest will be best served by a suitable notice of warning in writing.
3. ~~It shall be the duty of each Each~~ state's attorney to whom any violation is reported ~~to shall~~ cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the ~~department commissioner~~ reports a violation for prosecution, an opportunity shall be given the distributor to present the distributor's view to the ~~department commissioner~~.
4. The ~~department is authorized to commissioner may~~ apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate ~~any of the provisions of~~ this chapter or any rule ~~promulgated adopted~~ under the chapter

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<sup>117</sup> Section 19-13.1-12 was also amended by section 2 of House Bill No. 1058, chapter 243.

notwithstanding the existence of other remedies at law. ~~Said~~ The injunction to be issued without bond.

5. Any person adversely affected by an act, order, or ruling made pursuant to ~~the provisions of~~ this chapter may within forty-five days thereafter bring action in the district court for Burleigh County for new trial of the issues bearing upon such act, order, or ruling, and upon such trial the court may issue and enforce such orders, judgments, or decrees as the court may deem proper, just, and equitable.

**SECTION 11. AMENDMENT.** Section 19-13.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-13. **Publications.** The ~~department~~ commissioner may publish, in such forms as ~~it the commissioner may deem~~ determine proper, information concerning the sales of commercial feeds, together with such data on their production and use as ~~it the commissioner may consider~~ advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state. However, the information concerning production and use of commercial feeds ~~shall may~~ may not disclose the operations of any person.

**SECTION 12. AMENDMENT.** Section 19-13.1-14 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-14. **Cooperation with other entities.** The ~~department~~ commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations to carry out ~~the purpose and provisions of~~ this chapter.

**SECTION 13. AMENDMENT.** Section 19-14-02 of the North Dakota Century Code is amended and reenacted as follows:

19-14-02. **Registration of livestock medicine.** The ~~department~~ commissioner of agriculture, upon the application of the manufacturer or distributor ~~thereof of livestock medicine~~ and the payment of the registration fee prescribed in section 19-14-04, shall register any livestock medicine ~~which that~~ which does not violate ~~any of the provisions of~~ this chapter. ~~Such~~ The registration expires on June thirtieth of each year unless it is canceled sooner because a change is made in the ingredients or formula of manufacture or in the name, brand, or trademark under which the medicine is sold. In the event of any ~~such~~ such change, ~~such the~~ the medicine must be registered anew in the same manner as upon an original application.

<sup>118</sup> **SECTION 14. AMENDMENT.** Subsections 3 and 4 of section 19-14-03 of the North Dakota Century Code are amended and reenacted as follows:

3. Which has not been registered by the ~~department~~ commissioner of agriculture for sale in this state. The certificate of registration must include a disclosure of the name and quantity or proportion of each active ingredient, and the names of the inert ingredients or fillers.

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<sup>118</sup> Section 19-14-03 was also amended by section 11 of Senate Bill No. 2070, chapter 54.

4. Which does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
- The common name in English of all active ingredients in the order of their predominance in the product;
  - A statement of the actual percentage or relative amounts of each ingredient active and inert. In the case of certain products (such as coated medicinal tablets), it may be impractical to state the quantity or proportion of inert ingredients and exemptions must be established by ~~regulations issued~~ rules adopted by the ~~food commissioner and chemist~~;
  - The net contents, by weight, measure, or numerical count of ~~such~~ the package;
  - The name and principal address of the manufacturer or person responsible for placing ~~such~~ the livestock medicine on the market; and
  - Complete and explicit directions for use of ~~such~~ the medicine.

**SECTION 15. AMENDMENT.** Section 19-14-04 of the North Dakota Century Code is amended and reenacted as follows:

**19-14-04. Registration fee.** Prior to each annual registration, a registration fee of ten dollars must be paid to the ~~department~~ commissioner of agriculture for each livestock medicine ~~which that~~ is registered.

**SECTION 16. AMENDMENT.** Section 19-14-05 of the North Dakota Century Code is amended and reenacted as follows:

**19-14-05. Department Commissioner may cancel registration.** The ~~department~~ commissioner of agriculture may cancel the registration of any livestock medicine ~~which that~~ is sold subsequent to its registration in violation of ~~any of the provisions~~ of this chapter. The ~~department~~ commissioner of agriculture may cancel ~~such the~~ registration whenever a change is made in the ingredients or formula of the manufacture or in the name, brand, or trademark under which the medicine is sold, unless ~~such the~~ medicine has been reregistered.

**SECTION 17. AMENDMENT.** Section 19-14-06 of the North Dakota Century Code is amended and reenacted as follows:

**19-14-06. Department Commissioner may adopt rules and regulations, take testimony, grant public hearings.** The ~~department~~ commissioner of agriculture may adopt rules ~~and regulations pursuant to chapter 28-32~~ governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter. ~~It~~ The commissioner of agriculture may take expert and other testimony whenever ~~it~~ the commissioner deems ~~such~~ testimony advisable and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

**SECTION 18. AMENDMENT.** Section 19-14-07 of the North Dakota Century Code is amended and reenacted as follows:

19-14-07. **Enforcement of chapter.** The department commissioner of agriculture shall enforce ~~the provisions of~~ this chapter by inspection, chemical analysis, and any other appropriate method. All samples for analysis must be taken from stocks held within, or intended for sale in, this state. The ~~department commissioner of agriculture~~ may call upon any manufacturer or distributor applying for registration of a medicine to supply samples ~~thereof of the medicine~~ for analysis.

<sup>119</sup> **SECTION 19. AMENDMENT.** Section 19-18-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**19-18-02. Definitions.** For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Active ingredient" means:
  - a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient ~~which~~ that will prevent, destroy, repel, or mitigate pests.
  - b. In the case of a plant regulator, any ingredient ~~which~~ that, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.
  - c. In the case of a defoliant, any ingredient ~~which~~ that will cause the leaves or foliage to drop from a plant.
  - d. In the case of a desiccant, any ingredient ~~which~~ that will artificially accelerate the drying of plant tissue.
2. "Adulterated" applies to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.
3. "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.
4. "Commissioner" means the commissioner of agriculture.
5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.
5. "~~Department~~" means the state department of health and consolidated laboratories.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

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<sup>119</sup> Section 19-18-02 was also amended by section 2 of House Bill No. 1058, chapter 243.

7. "Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating pests but does not including include equipment used for the application of pesticides when sold separately therefrom, or rodent traps.
8. "Environment" means air, water, land, and all plants and man and other animals living therein, and the interrelationships ~~which~~ that exist among these.
9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act.
10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals, and those on or in processed food, beverages, or pharmaceuticals.
11. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.
12. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
13. "Inert ingredient" means an ingredient ~~which~~ that is not an active ingredient.
14. "Ingredient statement" means:
  - a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or
  - b. A statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of the inert ingredients, if there be, in the pesticide, except subdivision a applies if the preparation is highly toxic to man, determined as provided in section 19-18-05, and in addition to subsections 1 and 2 of section 19-18-05. In case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.
15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.
16. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects ~~which~~ that may be present in any environment whatsoever.

17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or any of its containers or wrappers.
18. "Labeling" means all labels and other written, printed, or graphic matter:
  - a. Upon the pesticide or device or any of its containers or wrappers;
  - b. Accompanying the pesticide or device at any time;
  - c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the environmental protection agency, the United States department of agriculture or interior, state agricultural experiment stations or centers, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of pesticides.
19. "Misbranded" applies:
  - a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
  - b. To any pesticide:
    - (1) If it is an imitation of or is offered for sale under the name of another pesticide;
    - (2) If its labeling bears any reference to registration under this chapter;
    - (3) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate to protect health and the environment;
    - (4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to protect health and the environment;
    - (5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package ~~which~~ that is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:
      - (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part ~~which~~ that is presented or displayed under customary conditions of purchase; and
      - (b) The ingredient statement appears prominently on another part of the immediate container, or outside

container or wrapper, permitted by the department commissioner;

- (6) The labeling does not contain a statement of the use classification under which the product is registered;
- (7) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:
  - (a) The name and address of the producer, registrant, or person for whom produced;
  - (b) The name, brand, or trademark under which the pesticide is sold;
  - (c) The net weight or measure of the content; and
  - (d) When required by regulation of the department commissioner to effectuate the purposes of this chapter, the registration number assigned to the pesticide under this chapter, and the use classification;
- (8) The pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this chapter:
  - (a) The skull and crossbones;
  - (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
  - (c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide;
- (9) If any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it ~~shall be~~ is injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying ~~such~~ the pesticide; or
- (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that the physical or physiological effect on plants or parts thereof may not be deemed injurious when this is the purpose for which

the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.

20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate nematodes.
21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural plants.
22. "Person" means any individual, partnership, association, corporation, limited liability company, or organized group of persons whether incorporated or not.
23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms except viruses, bacteria, or other micro-organisms on or in living man or other living animals.
24. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but does not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. The term "plant regulator" does not include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.
26. "Protect health and environment" means protection against any unreasonable adverse effects on the environment.
27. "Registrant" means the person registering any pesticide pursuant to ~~the provisions of~~ this chapter.
28. "Restricted use pesticides" means any pesticide ~~which~~ that the ~~department~~ commissioner has found and determined under the provisions of this chapter to be injurious to persons, beneficial insects, animals, crops, or to the environment other than the pests ~~it~~ the pesticide is intended to repel, destroy, control, or mitigate.
29. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal ~~which~~ that the ~~department shall declare~~ commissioner declares to be a pest.
30. "Snails or slugs" include all harmful agricultural mollusks.



31. "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
32. "Weed" means any plant ~~which~~ that grows where not wanted.

**SECTION 20. AMENDMENT.** Section 19-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**19-18-02.2. Advisory board - Creation - Duties.** The ~~state health officer~~ commissioner shall appoint and consult with a six-member advisory board regarding the testing and analyzing of North Dakota food and agricultural products for pesticide residue. The board must consist of a representative of a food processing company, a representative of the North Dakota agricultural experiment station, two representatives of North Dakota farm organizations, an individual representing agribusiness organizations, and a representative of the ~~commissioner of agriculture~~ state department of health and consolidated laboratories.

**SECTION 21. AMENDMENT.** Subsections 1 and 3 of section 19-18-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Any pesticide ~~which~~ that has not been registered pursuant to the provisions of section 19-18-04, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided, that in the discretion of the ~~department~~ commissioner, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.
3. The pesticide commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder pesticide ~~which~~ that the ~~department~~ commissioner, after investigation of and after public hearing on the necessity for ~~such~~ the action for the protection of the public health and the feasibility of ~~such~~ the coloration or discoloration, by regulation, ~~shall require~~ requires to be distinctly colored or discolored; unless it has been so colored or discolored. The ~~department~~ commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the ~~department~~ commissioner determines that ~~such~~ the coloring or discoloring for ~~such~~ the use or uses is not necessary for the protection of the public health.

<sup>120</sup> **SECTION 22. AMENDMENT.** Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

**19-18-04. Registration - Fees.** Any person before selling or offering for sale any pesticide for use within this state shall file annually with the ~~department~~ commissioner an application for registration of ~~such~~ the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product registered.
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by a registration fee of one hundred fifty dollars for each product registered. At the close of each calendar month, the ~~department~~ commissioner shall transmit to the state treasurer all moneys received for ~~such~~ the registrations. The state treasurer shall credit twenty-five dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet.

The ~~department~~ commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the ~~department~~ commissioner finds that the application conforms to law, the ~~department~~ commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the ~~department~~ commissioner the application is denied, the product may not be offered for sale.

Each registration expires on the thirty-first of December following its issuance. A certificate of registration may not be issued for a term longer than one year, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January first of each year, or within the same month ~~such~~ the pesticides are first manufactured or sold within this state.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

**SECTION 23. AMENDMENT.** Section 19-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>120</sup> Section 19-18-04 was also amended by section 1 of House Bill No. 1147, chapter 221.

**19-18-04.1. Reporting requirements.** Upon request of the department commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The report must be filed by March first. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

**SECTION 24. AMENDMENT.** Subsections 2 and 3 of section 19-18-04.2 of the North Dakota Century Code are amended and reenacted as follows:

2. Information revealed. After consideration of the applicant's request submitted under subsection 1, the department commissioner may not make any information public which in the department's commissioner's judgment contains or relates to trade secrets or to commercial or financial information obtained from an applicant. When necessary, information relating to formulas of products may be revealed to any state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the department commissioner.
3. Notification. If the department commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure under this section, the department commissioner shall notify the applicant or registrant by certified mail. The department commissioner may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

**SECTION 25. AMENDMENT.** Section 19-18-05 of the North Dakota Century Code is amended and reenacted as follows:

**19-18-05. Determinations - Rules and regulations - Uniformity.** The department is authorized commissioner, after opportunity for a hearing, may:

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

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

**SECTION 26. AMENDMENT.** Section 19-18-06 of the North Dakota Century Code is amended and reenacted as follows:

**19-18-06. Enforcement.** The examination of pesticides or devices must be made under the direction of the department commissioner for the purpose of determining whether ~~they the pesticides or devices~~ comply with the requirements of this chapter. If it appears from ~~such the~~ examination that a pesticide or device fails to comply with the provisions of this chapter, and the department commissioner contemplates instituting criminal proceedings against any person, the department commissioner shall cause appropriate notice to be given to such person. Any person so notified must be given an opportunity to present their views, either orally or in writing, with regard to ~~such the~~ contemplated proceedings and if thereafter in the opinion of the department commissioner it appears that ~~the provisions of the chapter have has~~ been violated by such person, then the department commissioner shall refer the facts to the state's attorney for the county in which the violation has occurred with a copy of the results of the analysis or the examination of ~~such the~~ article. ~~Nothing in this This chapter may be construed as requiring does not require~~ the department commissioner to report for prosecution or for the institution of libel proceedings minor violations of the chapter whenever the department commissioner believes that the public interests will be best served by a suitable notice of warning in writing. Each state's attorney to whom any ~~such~~ violation is reported shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction without delay. The department commissioner, by publication in ~~such the manner as the department may prescribe commissioner prescribes~~, shall give notice of all judgments entered in actions instituted under the authority of this chapter.

**SECTION 27. AMENDMENT.** Section 19-18-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**19-18-06.1. "Stop-sale" orders.** The department commissioner may issue and enforce a stop-sale order to the owner or custodian of any pesticide when the department commissioner finds that the product is being offered for sale in violation of the provisions of this chapter, and the order must direct that the product be held at a designated place until released in writing by the department commissioner. The owner or custodian of ~~such the~~ product has the right to petition a court of competent jurisdiction in the county where the product is found for an order releasing the product for sale in accordance with the findings of the court.

**SECTION 28. AMENDMENT.** Subsections 1 and 3 of section 19-18-07 of the North Dakota Century Code are amended and reenacted as follows:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if ~~such the~~ carrier, upon request, ~~shall permit permits~~ the department commissioner to copy all records showing the transactions in and movement of the articles.
3. The manufacturer or shipper of a pesticide for experimental use only:
  - a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
  - b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. If

a written permit has been obtained from the department commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

**SECTION 29. AMENDMENT.** Section 19-18-08 of the North Dakota Century Code is amended and reenacted as follows:

**19-18-08. Penalties.** Any person violating ~~any provision~~ of this chapter is guilty of an infraction. In any case where a registrant was issued a warning by the ~~department commissioner~~ pursuant to ~~the provisions~~ of this chapter, ~~such the~~ registrant is, upon violating ~~any provision~~ of this chapter other than subsection 1 of section 19-18-03, guilty of a class A misdemeanor, and the registration of the article with reference to which the violation occurred terminates automatically. A pesticide, the registration of which has been terminated, may not again be registered unless the pesticide, its labeling, and other material required to be submitted appear to the ~~department commissioner~~ to comply with all the requirements of this chapter. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the ~~department commissioner~~ through an administrative hearing pursuant to chapter 28-32.

**SECTION 30. AMENDMENT.** Section 19-18-10 of the North Dakota Century Code is amended and reenacted as follows:

**19-18-10. Delegation of duties.** All authority vested in the ~~department commissioner~~ by virtue of ~~the provisions~~ of this chapter may with like force and effect be executed by ~~such the~~ employees of the ~~department commissioner~~ as the ~~department commissioner~~ may from time to time designate for ~~said this~~ purpose.

**SECTION 31. AMENDMENT.** Section 19-18-11 of the North Dakota Century Code is amended and reenacted as follows:

**19-18-11. Cooperation.** ~~The department is authorized and empowered to commissioner may~~ cooperate with, and enter into agreements with, any other agency of this state or of the federal government or any other state or agency thereof for the purpose of carrying out ~~the provisions~~ of this chapter and securing uniformity of regulations.

<sup>121</sup> **SECTION 32. AMENDMENT.** Section 19-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-01. Enforcing official.** This chapter must be administered by the ~~state department of health and consolidated laboratories of the state of North Dakota commissioner of agriculture~~, hereinafter referred to as the ~~department commissioner~~.

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<sup>121</sup> Section 19-20.1-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

<sup>122</sup> **SECTION 33. AMENDMENT.** Subsections 6, 13, and 17 of section 19-20.1-02 of the North Dakota Century Code are amended and reenacted as follows:

6. "Fertilizer" means any substance containing one or more recognized plant nutrients ~~which that~~ is used for its plant nutrient content and ~~which that~~ is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by ~~department regulation~~ the commissioner by rule.
13. "Licensee" means any person licensed by the ~~department~~ commissioner to distribute a fertilizer, soil amendment, or plant amendment.
17. "Official sample" means any sample of fertilizer, soil amendment, or plant amendment, taken by the ~~department~~ commissioner and designated as "official" by the ~~department~~ commissioner.

<sup>123</sup> **SECTION 34. AMENDMENT.** Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03. Registration.** Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration must be submitted to the ~~department~~ commissioner on a form furnished by the ~~department~~ commissioner and must be accompanied by a fee of twenty-five dollars. Upon approval by the ~~department~~ commissioner, a certificate of registration must be furnished to the applicant. All registrations expire on June thirtieth of each year. A distributor is not required to register any brand of fertilizer, soil amendment, or plant amendment ~~which that~~ is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements.

**SECTION 35. AMENDMENT.** Section 19-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03.1. License required.** ~~No~~ A person may not distribute any fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the ~~department~~ commissioner. However, a distributor's license is not required for those distributors selling only specialty fertilizers. A license must be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license must be submitted on a form furnished by the ~~department~~ commissioner, and must be accompanied by a fee of fifty dollars. All licenses expire on June thirtieth of each year. Licenses are not transferable, and each license must be conspicuously posted at each location and must accompany each mobile mechanical unit operating in the state.

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<sup>122</sup> Section 19-20.1-02 was also amended by section 1 of House Bill No. 1148, chapter 222.

<sup>123</sup> Section 19-20.1-03 was also amended by section 2 of House Bill No. 1148, chapter 222.

**SECTION 36. AMENDMENT.** Section 19-20.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03.2. Proof of effectiveness.** The department commissioner may require proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The department commissioner must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The department commissioner may accept or reject other sources of proof as additional evidence.

**SECTION 37. AMENDMENT.** Section 19-20.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03.3. Protected information.** In submitting data required by this chapter, the applicant may clearly mark any portions that in the applicant's opinion are trade secrets or commercial or financial information and submit the marked material separately from other material.

After consideration of the applicant's request, the department commissioner may decide not to allow the information to become public ~~which that~~ the department commissioner determines to contain or relate to trade secrets or to commercial or financial information obtained from an applicant. If necessary, information relating to formulas of products may be revealed to a state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the department commissioner. If the department commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure, the department commissioner shall notify the applicant or registrant by certified mail. The department commissioner may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may begin an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

<sup>124</sup> **SECTION 38. AMENDMENT.** Section 19-20.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03.4. Guaranteed analysis.** Until the department commissioner prescribes the alternative form of guaranteed analysis in accordance with the provisions of this section, guaranteed analysis must be claimed in the following order and form:

1. Total Nitrogen (N) \_\_\_\_\_ percent

Available Phosphoric Acid ( $P_2O_5$ ) \_\_\_\_\_ percent

Soluble Potash ( $K_2O$ ) \_\_\_\_\_ percent

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<sup>124</sup> Section 19-20.1-03.4 was also amended by section 3 of House Bill No. 1148, chapter 222.

2. For unacidulated mineral phosphatic materials and basic slag, bone, tannage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness, or both, may also be guaranteed.
3. Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department commissioner. The guarantees for ~~such~~ any other nutrients must be expressed in the form of the element. The sources of other nutrients including oxides, salt, and chelates may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department commissioner and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the department commissioner.
4. The department commissioner may, by rule, require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
5. At any time ~~after July 1, 1967, when~~ the department commissioner finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in the elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, ~~it~~ the commissioner may require by rule that the guaranteed analysis be in the following form:

Total Nitrogen (N) \_\_\_\_\_ percent

Available Phosphorus (P) \_\_\_\_\_ percent

Soluble Potassium (K) \_\_\_\_\_ percent

The effective date of a rule under this subsection may not be less than six months following the issuance of the rule and for a period of two years following the effective date of the rule the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. After the effective date of a rule issued under this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium constitutes the grade.

6. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

**SECTION 39. AMENDMENT.** Subsections 1 and 4 of section 19-20.1-04 of the North Dakota Century Code are amended and reenacted as follows:

1. Any fertilizer, soil amendment, or plant amendment distributed in this state in containers must have placed on or affixed to the container a



label setting forth in clearly legible and conspicuous form the information required by the department commissioner.

4. The department commissioner may require the labels of specialty fertilizer sold in packages of fifty pounds [22.68 kilograms] or more, or sold in bulk, to contain the prominent statement "Not intended for farm use".

<sup>125</sup> **SECTION 40. AMENDMENT.** Section 19-20.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-06. Inspection fees and tonnage reports.** There must be paid to the department commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms] as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the department commissioner, on forms furnished by the department commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during such the period. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

**SECTION 41. AMENDMENT.** Section 19-20.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-07. Inspection fees and tonnage reports.** When more than one person is involved in the distribution of a registered product, the last person who has the product registered under section 19-20.1-03 and who distributes to a nonregistrant is responsible for reporting the tonnage and paying the inspection fee. The department commissioner may verify the records on which the statement of tonnage is based.

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<sup>125</sup> Section 19-20.1-06 was also amended by section 4 of House Bill No. 1148, chapter 222.

**SECTION 42. AMENDMENT.** Section 19-20.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-08. Inspection, sampling, analysis.** ~~It shall be the duty of the department to~~ The commissioner shall sample, inspect, make analyses of, and test fertilizers, soil amendments, and plant amendments distributed within this state at time and place and to such an extent as the ~~department commissioner~~ commissioner may deem necessary to determine whether ~~such these~~ these products are in compliance with the ~~provisions~~ of this chapter. The ~~department commissioner~~ commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to products subject to the ~~provisions~~ of this chapter and the rules ~~pertaining to~~ adopted under this chapter. The methods of analysis and sampling must be those adopted by the ~~department commissioner~~ commissioner from sources such as the A.O.A.C. journal. In cases not covered by ~~such these~~ these methods, or if methods are available in which improved applicability has been demonstrated, the ~~department commissioner~~ commissioner may adopt ~~such~~ appropriate methods from other sources.

In sampling a lot of fertilizer, a single package may constitute the official sample. The ~~department commissioner~~ commissioner, in determining for administrative purposes whether any fertilizer, soil amendment, or plant amendment is deficient, ~~shall must~~ be guided solely by the official sample obtained and analyzed by the ~~department commissioner~~ commissioner. The results of official analysis of any fertilizer, soil amendment or plant amendment ~~which that~~ has been found to be subject to penalty or other legal action ~~shall must~~ be forwarded by the ~~department commissioner~~ commissioner to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the ~~department commissioner~~ commissioner, the report becomes official. Official samples found to be deficient must be retained by the ~~laboratory commissioner~~ commissioner for thirty days from issuance of the analytical report. Upon request the ~~department commissioner~~ commissioner shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

**SECTION 43. AMENDMENT.** Section 19-20.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-10. Misbranding.** A fertilizer, soil amendment, or plant amendment is misbranded if false or misleading statements concerning the product are disseminated in any manner or by any means, if it carries a false or misleading statement on the label or labeling, if it is distributed under the name of another product, if it is not labeled as required by section 19-20.1-04 and in accordance with rules adopted under this chapter, and if it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless ~~such the~~ plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by rule of the ~~department commissioner~~ commissioner. In adopting ~~such these~~ these rules the ~~department commissioner~~ commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. It is unlawful to distribute a misbranded fertilizer, soil amendment, or plant amendment.

**SECTION 44. AMENDMENT.** Section 19-20.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-11. Publications.** The ~~department commissioner~~ commissioner may publish in ~~such the~~ the forms ~~as it may deem~~ the commissioner determines proper:

1. Information concerning the distribution of fertilizers, soil amendments, and plant amendments.

2. Results of analyses based on official samples of fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

**SECTION 45. AMENDMENT.** Section 19-20.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-12. Rules.** For the enforcement of this chapter, the department commissioner is authorized to adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, soil amendments, and plant amendments as necessary to carry into effect the full intent and meaning of this chapter. ~~When adopting any rules under the authority of this section, the department shall follow the procedures provided in chapter 28-32.~~

<sup>126</sup> **SECTION 46. AMENDMENT.** Subsections 3 and 4 of section 19-20.1-13 of the North Dakota Century Code are amended and reenacted as follows:

3. For the purpose of determining the commercial index value to be applied, the department commissioner shall determine at least annually the values per unit of nitrogen, available phosphoric acid, and soluble potash in fertilizers in this state.
4. If any fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the department commissioner to be short in weight, the registrant of the product shall within thirty days after official notice from the department commissioner pay to the consumer a penalty equal to four times the value of the actual shortage.

**SECTION 47. AMENDMENT.** Section 19-20.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-14. Cancellation of registrations.** The department commissioner may cancel the registration of any brand of fertilizer, soil amendment, or plant amendment and may cancel the license of any distributor or may refuse to register any brand of fertilizer, soil amendment, or plant amendment or may refuse to license any distributor as herein provided, upon satisfactory evidence that the registrant, licensee, or distributor has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules adopted under this chapter. No registration or license may be revoked or refused without opportunity for hearing given by the department commissioner.

**SECTION 48. AMENDMENT.** Section 19-20.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-15. "Stop-sale" orders.** The department commissioner may issue and enforce a written or printed "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, soil amendment, or plant amendment and an order to hold at a designated place when the department commissioner finds the fertilizer,

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<sup>126</sup> Section 19-20.1-13 was also amended by section 5 of House Bill No. 1148, chapter 222.

soil amendment, or plant amendment is being offered or exposed for sale in violation of this chapter or a rule adopted under this chapter until the law or rule has been complied with and the fertilizer, soil amendment, or plant amendment is released in writing by the department commissioner or the violation has been otherwise legally disposed of by written authority. The department commissioner shall release the fertilizer, soil amendment, or plant amendment so withdrawn when the requirements of this chapter and the rules adopted under this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

**SECTION 49. AMENDMENT.** Section 19-20.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-16. Seizure, condemnation, and sale.** Any lot of fertilizer, soil amendment, or plant amendment not in compliance with this chapter and the rules adopted under this chapter is subject to seizure on complaint of the department commissioner to the district court in the county in which the fertilizer, soil amendment, or plant amendment is located. In the event the court finds the fertilizer, soil amendment, or plant amendment to be in violation of this chapter or a rule adopted under this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the fertilizer, soil amendment, or plant amendment and the laws of the state. In no instance may the disposition of the fertilizer, soil amendment, or plant amendment be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the fertilizer, soil amendment, or plant amendment or for permission to process or relabel the fertilizer, soil amendment, or plant amendment to bring it into compliance with this chapter and the rules adopted under this chapter.

**SECTION 50. AMENDMENT.** Section 19-20.1-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-17. Violations - Penalty.**

1. If it appears from the examination of any fertilizer, soil amendment, or plant amendment that any of the provisions of this chapter or the rules adopted under this chapter have been violated, the department commissioner shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken. Any person so notified must be given opportunity to be heard under rules adopted by the department commissioner. If it appears after ~~such~~ the hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules adopted under this chapter have been violated, the department commissioner may certify the facts to the proper prosecuting attorney.
2. Any person convicted of violating this chapter or the rules adopted under this chapter or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department commissioner in the performance of ~~its~~ the commissioner's duty in connection with this chapter or the rules adopted under this chapter is guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of fertilizers, soil amendments, or plant amendments, a certified copy of the official analysis signed by the director of the chemistry division of the department person performing the analysis or the director's that person's assigned agent must be accepted as prima facie evidence of the composition.

3. Nothing in this chapter may be construed as requiring the ~~department commissioner~~ to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when the ~~director commissioner~~ believes that the public interests will be best served by a suitable notice of warning in writing.
4. It is the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
5. The ~~department commissioner~~ may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

**SECTION 51.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function. Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 19-13.1, 19-18, or 19-20.1 must be performed by the state department of health and consolidated laboratories for the commissioner of agriculture at no charge.

**SECTION 52. REPEAL.** Section 19-18-01 of the North Dakota Century Code is repealed.

Approved April 4, 1995  
Filed April 4, 1995

## CHAPTER 220

## HOUSE BILL NO. 1149

(Representative D. Henegar)

(At the request of the State Department of Health and Consolidated Laboratories)

## FEED AND PET FOOD REGISTRATION AND INSPECTION

AN ACT to amend and reenact sections 19-13.1-03 and 19-13.1-06 of the North Dakota Century Code, relating to pet food registration and feed inspection fees.

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

<sup>127</sup> SECTION 1. AMENDMENT. Section 19-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

## 19-13.1-03. Registration and license.

1. Each pet food and specialty pet food must be registered before being distributed in this state. The application for registration must be submitted on forms furnished by the department. The application must be accompanied by a label and any other printed matter describing each product and the registration fee of ~~twenty-five~~ fifty dollars per product. Upon approval by the department, a certificate of registration must be furnished to the applicant. Registrations are not transferable. ~~All registrations expire on December thirty-first of each year. Registration covers a two-year period beginning January first and ending December thirty-first.~~ Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product. Products found marketed in this state without proper registration must be assessed the penalty fee of twenty-five dollars.
2. A distributor is not required to register any brand of pet food or specialty pet food that is already registered under this chapter by another person.
3. Each person who manufactures commercial feed or whose name appears on the label of a commercial feed, other than pet food or specialty pet food, shall obtain a feed manufacturer's license from the department for each location. Each person who sells commercial feed, other than pet food or specialty pet food, at retail, shall obtain a feed retailer's license from the department. The license application must be on forms furnished by the department and must be accompanied by a fee of ~~fifty~~ one hundred dollars for feed manufacturers or ~~twenty-five~~ fifty dollars for feed retailers. The license covers a two-year period

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<sup>127</sup> Section 19-13.1-03 was also amended by section 3 of Senate Bill No. 2075, chapter 219.

beginning January first and ending December thirty-first. If a manufacturer is also a retailer of feed, the retail license is waived. A feed retailer's license must be obtained for each location used by the retailer. ~~All licenses expire on December thirty-first of each year.~~ Licenses are not transferable. License renewal applications received after January thirty-first may be assessed a penalty fee of ten dollars for retailers and twenty dollars for manufacturers. This subsection does not apply to any person who custom manufactures feed only for another person at that person's request and for that person's own use.

4. Each feed manufacturer required to be licensed under this chapter shall submit and maintain a current label file of all the feeds distributed in the state with the department except custom formula feeds.
5. The department may refuse to register or license any product or applicant not in compliance with the provisions of this chapter and to cancel any registration or license subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration or license may be refused or canceled until the registrant or licensee has been given opportunity to be heard before the department and to amend the application in order to comply with the requirements of this chapter.

<sup>128</sup> **SECTION 2. AMENDMENT.** Section 19-13.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**19-13.1-06. Inspection fees.** There must be paid to the department for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain, and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the thirty-first day of January of each year, an annual statement under oath, setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding year; and upon filing such statement shall pay the inspection fee. ~~When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage. The person whose name appears on the label as the manufacturer, guarantor, or distributor shall assume the liability for reporting and paying the inspection fee.~~
2. Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department has the right to examine such records to verify statements of tonnage.

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<sup>128</sup> Section 19-13.1-06 was also amended by section 4 of Senate Bill No. 2075, chapter 219.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

Approved April 5, 1995

Filed April 5, 1995



## CHAPTER 221

## HOUSE BILL NO. 1147

(Representative D. Henegar)

(At the request of the State Department of Health and Consolidated Laboratories)

## PESTICIDE PRODUCT REGISTRATION SCHEDULES

AN ACT to amend and reenact section 19-18-04 of the North Dakota Century Code, relating to pesticide product registration schedules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>129</sup> SECTION 1. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file ~~annually~~ biennially with the department an application for registration of such pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product registered.
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by a registration fee of ~~one hundred fifty~~ three hundred dollars for each product registered. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such registrations. The state treasurer shall credit ~~twenty-five~~ fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet.

The department may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the department finds that the application conforms to law, the department shall issue to the applicant a certificate of registration of the product. If after public hearing before the department the application is denied, the product may not be offered for sale.

Each registration ~~expires on the thirty-first of December following its issuance~~ covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term

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<sup>129</sup> Section 19-18-04 was also amended by section 22 of Senate Bill No. 2075, chapter 219.

longer than ~~one year~~ two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January ~~first of each year~~ thirty-first following the expiration date, or within the same month such pesticides are first manufactured or sold within this state.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

Approved March 14, 1995

Filed March 14, 1995

**CHAPTER 222****HOUSE BILL NO. 1148**

(Representative D. Henegar)

(At the request of the State Department of Health and Consolidated Laboratories)

**FERTILIZER LICENSING, REGISTRATION, AND FEES**

AN ACT to amend and reenact sections 19-20.1-02, 19-20.1-03, 19-20.1-03.4, 19-20.1-06, and 19-20.1-13 of the North Dakota Century Code, relating to definitions applicable to the registration and licensing of fertilizers, fertilizer registration schedules, guaranteed analysis of fertilizer, fertilizer inspection fees and tonnage reports, and phosphates; and to provide a penalty.

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

<sup>130</sup> **SECTION 1. AMENDMENT.** Section 19-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-02. Definitions of words and terms.** When used in this chapter:

1. "Brand" means a term, design, or trademark used in connection with one or several grades of fertilizer, soil amendments, or plant amendments.
2. "Bulk" means in a nonpackaged form.
3. "Compost" is a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that does not have inorganic fertilizer added other than to promote decomposition.
4. "Deficiency" means that amount of plant nutrient or active ingredient found by analysis is less than the amount guaranteed resulting from a lack of nutrient or active ingredients or from lack of uniformity.
5. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends fertilizer, soil amendments, or plant amendments, or who sells or offers for sale fertilizer, soil amendments, or plant amendments in this state.
6. "End user" means a person who uses a fertilizer, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime,

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<sup>130</sup> Section 19-20.1-02 was also amended by section 33 of Senate Bill No. 2075, chapter 219.

limestone, wood ashes, and other products excluded by department regulation.

- ~~7.~~ 8. "Fertilizer material" is a fertilizer which either:
- Contains no more than one of the primary plant nutrients;
  - Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
  - Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
- ~~8.~~ 9. "Foliar fertilizer" means a fertilizer designed and ordinarily applied directly to growing plant foliage to stimulate further growth.
- ~~9.~~ 10. "Grade" means the percentages of total nitrogen, available ~~phosphorus~~ or ~~phosphoric acid~~ phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis". "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
- ~~10.~~ 11. "Inert" means any ingredient not active.
- ~~11.~~ 12. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.
- ~~12.~~ 13. "Label" means all written, printed, or graphic matter upon or accompanying any fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting the sale thereof.
- ~~13.~~ 14. "Licensee" means any person licensed by the department to distribute a fertilizer, soil amendment, or plant amendment.
- ~~14.~~ 15. "Manipulated" means fertilizers, soil amendments, or plant amendments that are manufactured, blended, or mixed, or animal or vegetable manures that have been treated in any manner, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.
- ~~15.~~ 16. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.
- ~~16.~~ 17. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, soil amendments, or plant amendments.
- ~~17.~~ 18. "Official sample" means any sample of fertilizer, soil amendment, or plant amendment, taken by the department and designated as "official" by the department.

- ~~18.~~ 19. "Organic" in reference to fertilizer nutrients refers only to naturally occurring substances generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
- ~~19.~~ 20. "Percent" or "percentage" means the percentage by weight.
- ~~20.~~ 21. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
- ~~21.~~ 22. "Plant nutrient" means a nutrient generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
- ~~22.~~ 23. "Primary plant nutrients" are nitrogen, ~~phosphoric acid~~ phosphate, and potash.
- ~~23.~~ 24. "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under the provisions of this chapter.
- ~~24.~~ 25. "Sell" when applied to fertilizers, soil amendments, or plant amendments includes:
- a. The act of selling, transferring ownership.
  - b. The offering and exposing for sale, exchange, or distribution.
  - c. Giving away.
  - d. Receiving, accepting, holding, or possessing for sale, exchange, or distribution.
- ~~25.~~ 26. "Small package fertilizer" means fertilizer sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.
- ~~26.~~ 27. "Soil amendment" means any substance which is intended to improve the characteristics of the soil except fertilizers, ~~agricultural liming materials~~, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides. The term ~~shall include~~ includes fertilizer if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
- ~~27.~~ 28. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.
- ~~28.~~ 29. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

<sup>131</sup> **SECTION 2. AMENDMENT.** Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03. Registration.** Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration must be submitted to the department on a form furnished by the department and must be accompanied by a fee of ~~twenty-five~~ fifty dollars. Upon approval by the department, a certificate of registration must be furnished to the applicant. All registrations expire on June thirtieth of each year. Registrations cover a two-year period beginning July first and ending June thirtieth. Distribution of fertilizer products without prior registration or renewal received after July thirty-first must be assessed a penalty of twenty-five dollars per product. A distributor is not required to register any brand of fertilizer, soil amendment, or plant amendment which is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements.

<sup>132</sup> **SECTION 3. AMENDMENT.** Section 19-20.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03.4. Guaranteed analysis.** Until the department prescribes the alternative form of guaranteed analysis in accordance with the provisions of this section, guaranteed analysis must be claimed in the following order and form:

1. Total Nitrogen (N) \_\_\_\_\_ percent

Available ~~Phosphoric Acid~~ Phosphate ( $P_2O_5$ ) \_\_\_\_\_ percent

Soluble Potash ( $K_2O$ ) \_\_\_\_\_ percent

2. For unacidulated mineral phosphatic materials and basic slag, bone, tannage, and other organic phosphatic materials, the total ~~phosphoric acid phosphate~~ or degree of fineness, or both, may also be guaranteed.
3. Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for such other nutrients must be expressed in the form of the element. The sources of other nutrients including oxides, salt, and chelates may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the department.

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<sup>131</sup> Section 19-20.1-03 was also amended by section 34 of Senate Bill No. 2075, chapter 219.

<sup>132</sup> Section 19-20.1-03.4 was also amended by section 38 of Senate Bill No. 2075, chapter 219.

4. The department may, by rule, require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
5. At any time after July 1, 1967, when the department finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in the elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by rule that the guaranteed analysis be in the following form:

Total Nitrogen (N) \_\_\_\_\_ percent

Available Phosphorus (P) \_\_\_\_\_ percent

Soluble Potassium (K) \_\_\_\_\_ percent

The effective date of a rule under this subsection may not be less than six months following the issuance of the rule and for a period of two years following the effective date of the rule the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. After the effective date of a rule issued under this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium constitutes the grade.

6. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition including the percentages of each ingredient. If the product is a microbiological product, the number of viable microorganisms per milliliter for a liquid or the number of viable microorganisms per gram for a dry product must also be listed.

<sup>133</sup> **SECTION 4. AMENDMENT.** Section 19-20.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-06. Inspection fees and tonnage reports.** There must be paid to the department for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages

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<sup>133</sup> Section 19-20.1-06 was also amended by section 40 of Senate Bill No. 2075, chapter 219.

over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms] as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the department, on forms furnished by the department, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during such period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

<sup>134</sup> **SECTION 5. AMENDMENT.** Section 19-20.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-13. Deficiencies.**

1. A product is deficient if one or more of its guaranteed primary plant nutrients or other guaranteed active ingredients falls below the investigational allowances and compensations as established by rule or if the overall index value of the fertilizer is shown below the level established by rule.
2. A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
3. For the purpose of determining the commercial index value to be applied, the department shall determine at least annually the values per unit of nitrogen, available ~~phosphoric acid~~ phosphate, and soluble potash in fertilizers in this state.
4. If any fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the department to be short in weight, the registrant of the product shall within thirty days after official notice from the department pay to the consumer a penalty equal to four times the value of the actual shortage.

Approved March 14, 1995  
Filed March 14, 1995

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<sup>134</sup> Section 19-20.1-13 was also amended by section 46 of Senate Bill No. 2075, chapter 219.



## CHAPTER 223

## SENATE BILL NO. 2428

(Senator Tomac)

## ANHYDROUS AMMONIA FACILITIES

AN ACT to create and enact four new sections to chapter 19-20.2 of the North Dakota Century Code, relating to definitions, pressure relief valves, an anhydrous ammonia storage facility inspection fund, and prohibited activities involving anhydrous ammonia tanks; to amend and reenact sections 19-20.2-01, 19-20.2-02, 19-20.2-03, 19-20.2-04, 19-20.2-05, 19-20.2-06, 19-20.2-07, 19-20.2-08, 19-20.2-09, and 19-20.2-10 of the North Dakota Century Code, relating to anhydrous ammonia storage facilities; to provide a penalty; and to provide an appropriation.

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

SECTION 1. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Definition. "Anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.

SECTION 2. AMENDMENT. Section 19-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-01. Anhydrous ammonia safety rules. ~~Except as otherwise required by law, the~~ The commissioner of agriculture shall adopt rules necessary to implement this chapter and adopt the 1989 American national standard safety requirements for the storage and handling of anhydrous ammonia, except sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2 of the 1989 American national standard safety requirements are adopted as follows:

1. (2.5) Refers to paragraphs U-68, U-69, U-200, or U-201 of section VIII of the boiler and pressure vessel code of the American society of mechanical engineers, 1949 edition, or to section VIII division I of the boiler and pressure vessel code of the American society of mechanical engineers, 1950 edition, through the current edition including addenda and applicable code case interpretations.

Where referenced in this standard only section VIII division I of the American society of mechanical engineers code applies except that paragraphs UG-125 through UG-135 and paragraph UW-2 do not apply.

2. (5.2.1) Containers used with systems covered in sections 6, 9, 11, and 12 must be made of steel or other material compatible with ammonia, and tested in accordance with the current American society of mechanical engineers code. An exception to the American society of mechanical engineers code requirements is that construction under table UW 12 at a basic joint efficiency of under eighty percent is not authorized.

3. (5.2.2.2) Steels used in fabricating pressure containing parts of a container must have a tensile strength no greater than a nominal seventy-five thousand pounds per square inch [517110 kilopascals]; except this does not apply to sections 8, 9, and 10. (5.2.2.1) For new tanks installed or purchased after January 1, 1996, the entire container must be post-weld heat treated after completion of all welds in or to the shells and heads. The method employed must be as prescribed in the American society of mechanical engineers code. It is recommended that post-weld heat treatment be performed in a furnace of a size sufficient to accommodate the entire container. Welded attachments to pads may be made after post-weld heat treatment.
4. (5.2.2.2) Steels used in fabricating pressure containing parts of a container may not exceed a specified tensile strength of seventy-five thousand pounds per square inch [517110 kilopascals], as noted in the American society of mechanical engineers code, section II, part D, except that this does not apply to sections 8, 9, and 10. Allowances for tensile strength of up to twenty thousand pounds per square inch [137900 kilopascals] above those given in the American society of mechanical engineers code, section II, part D, are permitted.

**SECTION 3. AMENDMENT.** Section 19-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-02. License required - Existing anhydrous ammonia storage facilities.** Any user or ~~retail~~ vendor of anhydrous ammonia owning ~~one or more bulk or operating an anhydrous ammonia storage facilities exceeding six thousand gallons [22,712.47 liters] of storage capacity and constructed before July 1, 1985; facility~~ shall apply for an operator's license to the commissioner of agriculture ~~before September 30, 1985. However, any~~ and the board of county commissioners of the county in which the facility is located. ~~Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter, and may receive a license under this chapter regardless of noncompliance with the siting requirements. The commissioner may deny a license for failure to remit the proper fee with the application, or failure to comply with the rules adopted pursuant to this chapter. The license is valid indefinitely, but may not be transferred.~~

**SECTION 4. AMENDMENT.** Section 19-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-03. License required - Construction of anhydrous ammonia facilities.** No ~~permanent~~ anhydrous ammonia storage facility may be constructed ~~after June 30, 1985; or operated~~ without a license issued by the commissioner of agriculture and the board of county commissioners of the county in which the facility is to be constructed. An application for a license to site ~~and operate~~ an anhydrous ammonia storage facility must be made to the commissioner of agriculture and to the board of county commissioners. The commissioner or the board may deny a license for failure to remit the proper fee to the commissioner of agriculture, for failure to comply with the siting requirements of this chapter and rules adopted pursuant to this chapter ~~if constructed after June 30, 1985, or for failure to comply with local siting requirements. The commissioner of agriculture also may deny a license if the chief boiler inspector does not certify that the facility meets the initial inspection standards required by this chapter and by any rules adopted pursuant to this chapter. In order to obtain a license, an individual shall submit two sets of drawings or photographs and signed affidavits stating and showing the facility has been measured and meets the siting requirements along with the application for license.~~

The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. One set of drawings or photographs is for the commissioner of agriculture and the other is for the board of county commissioners.

**SECTION 5. AMENDMENT.** Section 19-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-04. State license fee.** The commissioner of agriculture shall charge a one-time fee for a license for each anhydrous ammonia storage facility site. The licensing fee is twenty-five dollars for ~~a bulk anhydrous ammonia storage facility exceeding six thousand gallons [22,712.47 liters] of storage capacity~~ and one hundred dollars for each retail and storage site. Expansion of an existing anhydrous ammonia storage facility, including the expansion of a facility constructed before July 1, 1985, does not require reapplication for licensing, but all siting requirements must be met. When an anhydrous ammonia storage facility changes ownership, the new owner shall obtain a license.

**SECTION 6. AMENDMENT.** Section 19-20.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-05. State siting requirements - Facilities** Anhydrous ammonia storage facilities constructed after June 30, 1985. For facilities constructed after June 30, 1985:

1. Any ~~permanent~~ anhydrous ammonia storage facility with a container nominal capacity of less than one hundred thousand gallons [378541.2 liters] must be ~~sited~~ located at least:
  - a. Fifty feet [15.24 meters] from the line of any adjoining property which may be built upon, or any highway or railroad mainline.
  - b. Four hundred fifty feet [137.16 meters] from any place of public assembly or residence, other than the company's business office.
  - c. Seven hundred fifty feet [213.36 meters] from any institutional residence.
2. Any ~~permanent~~ anhydrous ammonia storage facility with container nominal capacity of one hundred thousand gallons [378541.2 liters] or more must be located at least:
  - a. Fifty feet [15.24 meters] from the property line of adjoining property, which may be built upon, or any highway or railroad mainline.
  - b. Six hundred feet [182.88 meters] from any place of public assembly or residence, other than the company's business office.
  - c. One thousand feet [300.48 meters] from any institution residence.
3. Upon relocation of any permanent storage container to an anhydrous ammonia storage facility, the container must be hydrostatically pressure tested at the maximum allowable working pressure of the vessel or wet fluorescent magnetic particle tested, also referred to as black light tested. Before the container may be put into service and before licensing may

occur, proof of testing must be supplied to the county and the commissioner of agriculture.

4. All valves and other appurtenances to any anhydrous ammonia storage facility must be protected against physical damage. All shutoff valves must be kept closed and locked when not in use and when the facility is unattended.
5. Any anhydrous ammonia storage facility relocated or constructed after August 1, 1995, may not be located within city limits, unless approved by the city.

**SECTION 7. AMENDMENT.** Section 19-20.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-06. Transfer hose requirements.** The following requirements apply to any transfer hose utilized at an anhydrous ammonia storage facility:

1. Any liquid transfer hose that is not drained of liquid upon completion of transfer operations must be equipped with an approved shutoff valve at the discharge end.
2. ~~To prevent excessive hydrostatic pressure in hoses, differential pressure pass valves may be added, not to exceed fifty pounds per square inch [344.74 kilopascals] of pressure; A hydrostatic relief valve or equivalent must be installed in each section of hose or pipe in which liquid ammonia can be isolated between shutoff valves to relieve the pressure that could develop from the trapped liquid. If an equivalent pressure relief device is used, the maximum accumulated pressure possible within the system may not exceed the limits of the system. A hydrostatic relief valves may valve must be installed between each pair of valves in which liquid may be trapped; or a hose may be used to discharge liquid at a safe location. Any. The start-to-discharge pressure setting of the relief valve must not be designed to handle less than three hundred fifty pounds per square inch [2413.18 kilopascals] gauge nor more than four hundred pounds per square inch [2757.92 kilopascals] gauge.~~
3. ~~Pressure relief valves must be replaced every five years.~~
4. A transfer hose must have etched, cast, or impressed on the outer coating all of the following:
  - a. The words "ANHYDROUS AMMONIA".
  - b. The maximum working pressure of the transfer hose.
  - c. The name of the manufacturer of the hose.
  - d. The date of manufacture or the expiration date of the hose.
- 5- 4. A transfer hose cut, scraped, cracked, or weathered so that the inner white cord is visible must be replaced. A transfer hose with an expiration date printed on the hose must be replaced prior to that date. Transfer hoses without an expiration date must be replaced as follows:

- a. Rayon hoses must be replaced within two years of the date of manufacture.
- b. Nylon hoses must be replaced within four years of the date of manufacture.
- c. Steel reinforced hoses must be replaced within six years of the date of manufacture.

Notwithstanding the replacement dates determined under this subsection for transfer hoses with or without an expiration date, an additional year must be allowed for replacement of transfer hoses in order to take into account delays in the original installation of transfer hoses.

**SECTION 8.** A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Pressure relief devices. Bulk storage containers constructed according to the American society of mechanical engineers code, and all nurse tanks, must be equipped with pressure relief valves constructed according to the American society of mechanical engineers code and capacity certified by the national board of boiler and pressure vessel inspectors. A pressure relief valve using nonmetallic seats must be replaced every five years with a new valve meeting the standards referenced in this section. A pressure relief valve using metallic seats must be tested every five years in lieu of replacement, and repairs, if deemed necessary, must be made by the valve manufacturer or by a safety valve repair organization having a valid "VR" certificate of authorization for the repairs from the national board of boiler and pressure vessel inspectors.

**SECTION 9. AMENDMENT.** Section 19-20.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-07. Inspection.**

1. The chief boiler inspector and the commissioner of insurance shall cooperate with the commissioner of agriculture to develop and implement an initial and periodic inspection program for anhydrous ammonia storage facilities. The chief boiler inspector shall inform the commissioner of agriculture of any violation of this chapter that may arise in the course of an inspection of an anhydrous ammonia storage facility.
2. The commissioner ~~may~~ of insurance shall inspect each permanent installation for storage of anhydrous ammonia storage facility at least once every five years and each may inspect any farm transportation wagon or vehicle designed to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage facility.
- 2+ 3. The commissioner ~~shall~~ of insurance may inspect any anhydrous ammonia storage facility where the commissioner has reason to believe violations of the safety standards under this chapter exist. The safety engineer of the North Dakota workers compensation bureau shall inform the commissioner of agriculture of any violations of this chapter that arise in the course of the safety engineer's regular inspections of anhydrous ammonia storage facilities.

- 3- 4. The commissioner of agriculture may revoke or suspend the license of any anhydrous ammonia storage facility violating this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any farm transportation wagon or implement of husbandry which is found unsafe or hazardous.

SECTION 10. AMENDMENT. Section 19-20.2-08 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08. Promotion of safety - Use of excess fees. Any excess All fees collected under this chapter must be used by the commissioner of agriculture to promote safety in anhydrous ammonia use and storage, in the administration of the program, and in the inspection of facilities.

SECTION 11. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Anhydrous ammonia storage facility inspection fund. The anhydrous ammonia storage facility inspection fund is a special fund in the state treasury. The fund consists of all inspection fees collected in accordance with section 19-20.1-06 which are related to the distribution of anhydrous ammonia.

SECTION 12. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Prohibitions. The following action is prohibited:

1. Filling a nurse tank directly from a rail car.
2. Filling or using a nurse tank that has an outdated hose.
3. Filling or using a nurse tank that has outdated relief valves.
4. Towing more than two nurse tanks on a public road.
5. Filling department of transportation transport containers not currently certified by the department of transportation.
6. Filling anhydrous ammonia storage tanks not meeting the requirements of this chapter.

SECTION 13. AMENDMENT. Section 19-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-09. Enforcement.

1. The commissioner of agriculture shall enforce the requirements of this chapter and any rules issued under it.
2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule issued pursuant to this chapter, in the district court of the county in which the violation occurs or is about to occur.
3. The commissioner of agriculture may seek an injunction in the district court of the county where any alleged violation is occurring, or may

issue a cease and desist order to any person allegedly violating this chapter. If any person violates the cease and desist order, the commissioner shall file the appropriate criminal complaint.

4. For the purpose of carrying out this chapter, the commissioner of agriculture and the commissioner of insurance may enter upon any public or private premises at reasonable times to:
  - a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used.
  - b. Inspect or investigate complaints.
  - c. Inspect any premises or other place where anhydrous ammonia or devices are held for distribution, sale, or use.
5. If a civil penalty pursuant to section 19-20.2-10 is imposed by the commissioner of agriculture through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

**SECTION 14. AMENDMENT.** Section 19-20.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-10. Penalty.**

1. Any person violating this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person is deemed to be the act, omission, or failure of the person as well as that of the person employed.
3. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner of agriculture through an administrative hearing.

**SECTION 15. TRANSFER.** There is hereby authorized the transfer to the fire and tornado fund the sum of \$140,000 from the anhydrous ammonia storage facility inspection fund. The money must be transferred during the biennium beginning July 1, 1995, and ending June 30, 1997, upon order of the commissioner of insurance. The state treasurer shall transfer any balance remaining in the anhydrous ammonia storage facility inspection fund on June 30, 1997, to the general fund in the state treasury.

**SECTION 16. APPROPRIATION.** There is hereby appropriated out of any moneys in the fire and tornado fund the sum of \$120,000, or so much of the sum as may be necessary, to the commissioner of insurance for the purpose of inspecting anhydrous ammonia storage facilities for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 17. APPROPRIATION.** There is hereby appropriated out of any moneys in the fire and tornado fund the sum of \$20,000, or so much of the sum as may be necessary, to the commissioner of agriculture for the purpose of administering and enforcing the provisions of this Act for the biennium beginning July 1, 1995, and ending June 30, 1997.

Approved April 12, 1995

Filed April 13, 1995



# GAME, FISH, PREDATORS, AND BOATING

## CHAPTER 224

### HOUSE BILL NO. 1181

(Representatives Hanson, Brown, Kroeber, Wardner)  
(Senator Urlacher)

## TRAPPING INTERFERENCE

AN ACT to amend and reenact section 20.1-01-31 of the North Dakota Century Code, relating to interference with rights of trappers.

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

**SECTION 1. AMENDMENT.** Section 20.1-01-31 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-01-31. Interference with rights of hunters and trappers.** No person may intentionally interfere with the lawful taking of wildlife on public or private land by another or intentionally harass, drive, or disturb any wildlife on public or private land for the purpose of disrupting a lawful hunt. Except for department personnel, the person setting the trap or snare, or that person's agent, no person may remove or tamper with a trap or snare legally set to take fur-bearing animals or unprotected wild animals or remove the fur-bearing animal or unprotected wild animal from a trap or snare. This section does not apply to any incidental interference arising from lawful activity by public or private land users or to landowners or operators interfering with hunters on land owned or operated by that individual.

Approved March 14, 1995  
Filed March 14, 1995

**CHAPTER 225****HOUSE BILL NO. 1108**

(Representative Torgerson)

(Senator Nalewaja)

(At the request of the Game and Fish Department)

**GUIDES AND OUTFITTERS**

AN ACT to amend and reenact subsection 17 of section 20.1-02-05 of the North Dakota Century Code, relating to acting as a guide or outfitter without a license; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 17 of section 20.1-02-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17. Subject to the provisions of chapter 28-32, adopt rules for the licensing of guides or outfitters, and may require records and reports as the director determines necessary. The director may, after due hearing as provided in chapter 28-32, revoke or refuse to renew the license of any person who violates the rules or fails to provide the records and reports. Any person who acts as a guide or outfitter without a license is guilty of a class B misdemeanor.

Approved March 14, 1995

Filed March 14, 1995

## **CHAPTER 226**

### **SENATE BILL NO. 2451**

(Senators B. Stenehjem, Mathern, St. Aubyn)  
(Representatives Carlson, Hanson, D. Henegar)

## **MOTORBOAT PROGRAMS AND SAFETY ACCOUNT**

AN ACT to create and enact a new section to chapter 20.1-02 of the North Dakota Century Code, relating to funding of the motorboat programs and safety account from the highway tax distribution fund.

### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

**Motorboat programs and safety account - Transfer from highway tax distribution fund.** On July first of each year the state treasurer shall transfer from the highway tax distribution fund, before allocation of the fund under section 54-27-19, to the motorboat programs and safety account an amount equal to two dollars and fifty cents multiplied by the number of motor boats licensed with the game and fish department as of July first of that year.

Approved March 17, 1995  
Filed March 17, 1995

**CHAPTER 227****SENATE BILL NO. 2142**

(Senator Nalewaja)

(Representative Wilkie)

(At the request of the Game and Fish Department)

**HUNTER SAFETY EDUCATION COURSE  
REQUIREMENTS**

AN ACT to amend and reenact section 20.1-03-01.2 of the North Dakota Century Code, relating to hunter safety education course completion requirements; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 20.1-03-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-03-01.2. Instruction required before issuance of hunting license - Age limits - Penalty.** No person born after December 31, 1961, except as provided in section 20.1-03-01.3, may be issued any hunting license in this state unless he that person submits or exhibits the certificate of completion earned by him that person for successful completion of the course of instruction required by sections 20.1-03-01.1 through 20.1-03-01.3 or the person submits or exhibits a prior North Dakota hunting license issued to that person with that person's hunter education certificate number on the license. A certificate of completion issued by any other state or province of Canada is valid for all purposes. Any person who ~~violates this section~~ purchases a hunting license without successfully completing the course of instruction required by sections 20.1-03-01.1 through 20.1-03-01.3 is guilty of a class 2 noncriminal offense.

Approved April 11, 1995

Filed April 12, 1995

## CHAPTER 228

## HOUSE BILL NO. 1070

(Representative Hanson)

## NONRESIDENT RECIPROCAL TRAPPING LICENSE

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to the fee for a nonresident reciprocal trapping license; and to amend and reenact subsection 2 of section 20.1-03-07 and section 20.1-03-10 of the North Dakota Century Code, relating to nonresident reciprocal trapping licenses.

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

SECTION 1. AMENDMENT. Subsection 2 of section 20.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Trap, catch, attempt to catch, take, or kill any protected fur-bearing animal except that nonresidents holding a valid nonresident fur-bearer and nongame hunting license may hunt only fox and coyote and residents of a state that allows North Dakota residents to trap within that state may purchase a nonresident reciprocal trapping license to trap in this state. However, a nonresident holding a valid nonresident reciprocal trapping license may not trap, catch, attempt to catch, take, or kill bobcats.

SECTION 2. AMENDMENT. Section 20.1-03-10 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-10. Contents of nonresident general game ~~or~~, fishing, or reciprocal trapping licenses - Licenses not transferable - Nonresident short-term fishing license. A nonresident general game ~~or~~, fishing, or reciprocal trapping license is not transferable. Each ~~such~~ license ~~shall~~ must:

1. Describe the licensee.
2. Designate the licensee's place of residence.
3. Have printed upon it in large figures the year for which it is issued.
4. Have printed upon it in large letters the words "nonresident license" and "nontransferable".
5. Have connected to it detachable shipping tags as the director may deem advisable.
6. Be issued in the name of the director.

In addition to the regular nonresident fishing license, ~~there is hereby authorized a~~ nonresident short-term fishing license may be issued. This license ~~shall be~~ is valid up to seven days from the date of issue.

<sup>135</sup> **SECTION 3.** A new subsection to section 20.1-03-12 of the North Dakota Century Code is created and enacted as follows:

For a nonresident reciprocal trapping license, two hundred fifty dollars.

Approved March 7, 1995

Filed March 7, 1995

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<sup>135</sup> Section 20.1-03-12 was also amended by section 1 of House Bill No. 1139, chapter 231, and sections 1 and 2 of House Bill No. 1107, chapter 232.

## CHAPTER 229

## SENATE BILL NO. 2143

(Senator Nalewaja)

(Representative Wilkie)

(At the request of the Game and Fish Department)

## NONRESIDENT YOUTH HUNTING LICENSES

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to nonresident youth hunting licenses; and to amend and reenact section 20.1-03-07.1 of the North Dakota Century Code, relating to nonresident waterfowl hunting licenses.

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

SECTION 1. AMENDMENT. Section 20.1-03-07.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07.1. Nonresident waterfowl hunting license required. A Except as provided in section 2 of this Act, a nonresident may not hunt waterfowl unless he that person first obtains a nonresident waterfowl hunting license, in addition to a nonresident small game hunting license. The nonresident waterfowl hunting license shall entitle entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each and in specified waterfowl hunting zones. A license authorizing two 7-day hunting periods may allow hunting in a different zone during each period. The governor, in his the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year.

SECTION 2. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Nonresident youth hunting licenses. A nonresident youth who is less than sixteen years of age may purchase a resident small game hunting license and may hunt small game and waterfowl except swans and wild turkeys; provided, that the nonresident youth's state, or province or territory of Canada, of residence provides a reciprocal licensing agreement for North Dakota residents who are less than sixteen years of age. To be eligible to purchase a license under this section, a nonresident youth may not have arrived at the age of sixteen before September first of the year for which the license is issued and must possess a certificate of completion for a certified hunter education course. The nonresident youth may only hunt under the supervision of an adult family member or legal guardian who is licensed to hunt small game or waterfowl in this state and is subject to the same regulations as that youth's adult family member or legal guardian. This section does not apply to the hunting of big game or to a license issued by lottery.

Approved April 6, 1995

Filed April 6, 1995

## CHAPTER 230

## SENATE BILL NO. 2072

(Legislative Council)  
(Interim Natural Resources Committee)  
(Senator Urlacher)  
(Representatives Brown, Hanson)

GRATIS AND LANDOWNER PREFERENCE HUNTING  
LICENSES

AN ACT to amend and reenact subsections 3, 5, 7, and 8 of section 20.1-03-11 of the North Dakota Century Code, relating to gratis and landowner preference hunting licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3, 5, 7, and 8 of section 20.1-03-11 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive without charge, upon filing an affidavit describing a minimum of a quarter section [64.75 hectares] of land that is leased for agricultural purposes or owned by that person and which is within a district open for hunting of deer; a license to hunt deer. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt deer without charge upon filing an affidavit describing that land. The land must be within a unit open for the hunting of deer. The license must include a legal description of the eligible land described in the affidavit and may be used to hunt deer only upon that land. Upon request a lessee shall provide proof that the land described in the affidavit is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection may not receive a license under this subsection for the season for which the eligibility was transferred. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license.
5. A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive without charge, upon filing an affidavit describing a minimum of a quarter section [64.75 hectares] of land that is leased for agricultural purposes or owned by that person and which is within a district or unit open for hunting of antelope; a license to hunt antelope. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt antelope without charge upon filing



an affidavit describing that land. The land must be within a unit open for the hunting of antelope. The license must include a legal description of the eligible land described in the affidavit and may be used to hunt antelope only upon that land. Upon request a lessee shall provide proof that the land described in the affidavit is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection may not receive a license under this subsection for the season for which eligibility was transferred. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. The number of licenses issued without charge under this subsection may not exceed the total number of licenses prescribed for each district or unit in the governor's proclamation. If the number of applications eligible persons who apply for licenses issued without charge under this subsection exceeds the number of licenses prescribed for the district or unit in the governor's proclamation less any licenses that are otherwise designated to be issued with a charge under this subsection, the licenses to be issued without charge must be issued by lottery as prescribed in the governor's proclamation. If the number of licenses prescribed for the district or unit in the governor's proclamation exceeds fifty and if the number of applications for these licenses exceeds the number of licenses prescribed for the district or unit in the governor's proclamation, then one-half of the licenses exceeding fifty must be issued by lottery as prescribed in the governor's proclamation and may not be issued to landowners without charge. The licenses issued by lottery as prescribed in this subsection are not subject to the provisions of subdivision a of subsection 2 of section 20.1-08-04.

7. A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive, upon payment of the fee requirement for a resident big game license and filing an affidavit describing a minimum of a quarter section [64.75 hectares] of land that is leased for agricultural purposes or owned by that person and which is within a district or unit open for hunting of elk; a preferential landowner license to hunt elk within the district or unit in which the land described in the affidavit is located. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt elk upon filing an affidavit describing that land and payment of the fee requirement for a resident big game license. The land must be within a unit open for the hunting of elk. The license must include a legal description of the eligible land described in the affidavit and may be used to hunt elk within the district or unit in which the land described in the affidavit is located. Upon request a lessee shall provide proof that the land described in the affidavit is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6. If not otherwise specified in an agricultural lease, the

landowner is entitled to receive the license. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: that portion of township one hundred forty-seven north, range ninety-five west which is north and west of state highway twenty-two; township one hundred forty-six north, range ninety-six west; township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north, range ninety-six west; township one hundred forty-seven north, range ninety-seven west; township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County; and other areas within a district or unit open for hunting of elk as prescribed in the governor's proclamation. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not be less than one permit, nor exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit.

8. A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive, upon paying the fee for a resident big game license and filing an affidavit describing a minimum of a quarter section [64.75 hectares] of land that is leased for agricultural purposes or owned by that person and which is within a district or unit open for hunting of moose; a preferential landowner license to hunt moose. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt moose without charge upon filing an affidavit describing that land. The land must be within a unit open for the hunting of moose. The license must include a legal description of the eligible land described in the affidavit and may be used to hunt moose only upon that land. If a license under this section is issued for a district or unit, at least one license must be issued under this subsection for that district or unit for hunting moose. Upon request a lessee shall provide proof that the land described in the affidavit is leased for agricultural purposes. A resident who is eligible for a license under this subsection

may transfer that eligibility for the license to a spouse or a legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the North Dakota game warden association raffle under section 20.1-08-04.2. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. The number of licenses issued under this subsection for a district or unit may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for that district or unit. If the number of eligible persons who apply for a license under this subsection exceeds the number of licenses available under this subsection, the licenses must be issued by lottery as prescribed in the governor's proclamation. A license to hunt moose may not be issued under this subsection for a district or unit open for the hunting of moose when the total number of licenses allocated to that district or unit is less than ten. A person who receives a license under this subsection and who is successful in harvesting a moose is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the North Dakota game warden association raffle under section 20.1-08-04.2. Notwithstanding this subsection, if a person other than the transferee of license eligibility is unsuccessful in harvesting a moose under this subsection, that person may return the unused license to the department and is eligible to apply for, but not transfer an additional license to hunt moose in future years. A person who receives a second license under this subsection is not eligible to participate in the North Dakota game warden association raffle under section 20.1-08-04.2. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit.

Approved April 5, 1995  
Filed April 5, 1995

## CHAPTER 231

## HOUSE BILL NO. 1139

(Representative D. Henegar)

(Senator Redlin)

(At the request of the Game and Fish Department)

## RESIDENT FISHING LICENSE FEES

AN ACT to amend and reenact section 20.1-03-12 of the North Dakota Century Code, relating to resident fishing license fees; to repeal section 20.1-03-10.1 of the North Dakota Century Code, relating to trout and salmon license stamps; and to provide an effective date.

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

<sup>136</sup> SECTION 1. AMENDMENT. Section 20.1-03-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12. Schedule of fees for licenses and permits. The various license and permit fees are as follows:

1. For a resident, age sixteen and over small game hunting license, six dollars.
2. For a nonresident small game hunting license, seventy-five dollars.
3. For a resident big game hunting license, twenty dollars, except the fee for a licensee under age sixteen is ten dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
4. For a nonresident big game hunting license, one hundred fifty-five dollars, and for a nonresident bow license, one hundred fifty-five dollars, and a nonrefundable five dollar application fee must accompany any lottery license fee under this subsection, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
5. For a resident fur-bearer license, seven dollars.
6. For a resident fishing license, ~~nine~~ ten dollars, except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee is three dollars.
7. For a nonresident fishing license, twenty-five dollars.
8. For a nonresident short-term seven-day fishing license, fifteen dollars.
9. For a resident husband and wife fishing license, ~~thirteen~~ fourteen dollars.

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<sup>136</sup> Section 20.1-03-12 was also amended by section 3 of House Bill No. 1070, chapter 228, and sections 1 and 2 of House Bill No. 1107, chapter 232.

10. For a nonresident nongame hunting license, fifteen dollars.
11. For a wild turkey permit, eight dollars.
12. For an annual general game license, three dollars.
13. For a permit to propagate, domesticate, or possess protected wildlife, five dollars.
14. For a license to a nonresident buyer or shipper of green furs, or that person's agent, the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, whichever is greater.
15. For a license to a resident buyer or shipper of green furs, eight dollars for each place of business maintained by that person within this state.
16. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
17. For an annual license to practice taxidermy, twenty-five dollars.
18. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than that person's home or to points outside this state, three dollars. For a resident certificate fee, one dollar, and for a nonresident certificate fee, two dollars. An agent may not charge a service fee for issuing a resident or nonresident certificate fee.
19. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
20. For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, nine dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, twenty-one dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, thirty dollars.
21. To operate watercraft used for hire, the following license fees apply for three years:
  - Class 1. Each craft capable of carrying two adults of average weight, six dollars.
  - Class 2. Each craft capable of carrying three adults of average weight, six dollars.
  - Class 3. Each craft capable of carrying four adults of average weight, six dollars.
  - Class 4. Each craft capable of carrying five adults of average weight, six dollars.

- Class 5. Each craft capable of carrying up to eight adults of average weight, nine dollars.
- Class 6. Each craft capable of carrying up to ten adults of average weight, twelve dollars.
- Class 7. Each craft capable of carrying up to fifteen adults of average weight, twenty-four dollars.
- Class 8. Each craft capable of carrying sixteen or more adults of average weight, thirty dollars.
22. For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, fifteen dollars for each hoop-net or trap, and fifteen dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.
  23. For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, ten dollars for each unit.
  24. For a resident or nonresident paddlefish tag annual license, three dollars per tag.
  25. For an annual resident license to sell minnows or other live bait at wholesale, thirty dollars.
  26. For an annual license to sell minnows or other live bait at retail, fifteen dollars, except the fee is seventy-five dollars if white suckers are sold.
  27. For an annual license to operate a private fish hatchery, seventy-five dollars.
  28. For a resident commercial frog license, fifty dollars.
  29. For a nonresident commercial frog license, two hundred dollars.
  30. For a resident frog license, three dollars.
  31. For a resident husband and wife frog license, five dollars.
  32. For a shooting preserve operating permit:
    - a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or
    - b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].
  33. For an annual license to guide for both hunting and fishing, one hundred fifty dollars.
  34. For an annual license to guide only for hunting, one hundred dollars.

35. For an annual license to guide only for fishing, one hundred dollars.
36. For a nonresident waterfowl hunting license, ten dollars.
37. For a nonresident husband and wife fishing license, thirty-five dollars.
38. ~~For a trout and salmon license stamp, four dollars.~~
39. For a nonresident short-term three-day fishing license, ten dollars.
- ~~40.~~ 39. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.
- ~~41.~~ 40. For a combination license, twenty-five dollars.
- ~~42.~~ 41. For a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents, two hundred ~~and~~ fifty dollars.
- ~~43.~~ 42. For a resident swan license, five dollars.
- ~~44.~~ 43. For a nonresident swan license, twenty-five dollars.
- ~~45.~~ 44. For a resident and nonresident sandhill crane license, five dollars.
- ~~46.~~ 45. For a resident commercial clam license, one hundred dollars.
- ~~47.~~ 46. For a nonresident commercial clam license, one thousand dollars.
- ~~48.~~ 47. For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the director a surety bond in the sum of two thousand dollars.
- ~~49.~~ 48. For an annual nonresident license to sell minnows or other live bait at wholesale, two hundred dollars.
- ~~50.~~ 49. For a bighorn sheep license issued to a nonresident, five hundred dollars.

The fees for these licenses and permits, except for motorboat license fees, must be deposited with the state treasurer and credited to the game and fish fund.

**SECTION 2. REPEAL.** Section 20.1-03-10.1 of the North Dakota Century Code is repealed.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on April 1, 1996.

Approved March 14, 1995  
Filed March 14, 1995

**CHAPTER 232****HOUSE BILL NO. 1107**

(Representative D. Henegar)

(Senator Redlin)

(At the request of the Game and Fish Department)

**NONRESIDENT PADDLEFISH LICENSE FEES**

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to nonresident paddlefish license fees; to amend and reenact subsection 24 of section 20.1-03-12 of the North Dakota Century Code, relating to paddlefish license fees; and to declare an emergency.

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

<sup>137</sup> **SECTION 1. AMENDMENT.** Subsection 24 of section 20.1-03-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24. For a resident ~~or nonresident~~ paddlefish tag annual license, three dollars per tag.

<sup>138</sup> **SECTION 2.** A new subsection to section 20.1-03-12 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

For a nonresident paddlefish tag annual license, seven dollars and fifty cents per tag.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 1, 1995  
Filed March 1, 1995

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<sup>137</sup> Section 20.1-03-12 was also amended by section 3 of House Bill No. 1070, chapter 228, and section 1 of House Bill No. 1139, chapter 231.

<sup>138</sup> Section 20.1-03-12 was also amended by section 3 of House Bill No. 1070, chapter 228, and section 1 of House Bill No. 1139, chapter 231.



## CHAPTER 233

### HOUSE BILL NO. 1105

(Representative D. Henegar)

(Senator Redlin)

(At the request of the Game and Fish Department)

### COMPUTER LICENSE SYSTEM

AN ACT to create and enact sections 20.1-03-32, 20.1-03-33, and 20.1-03-34 of the North Dakota Century Code, relating to establishing a computer hunting and fishing license system.

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

**SECTION 1.** Section 20.1-03-32 of the North Dakota Century Code is created and enacted as follows:

**20.1-03-32. Computer-generated license.** In addition to the license system under this chapter, licenses may be generated by a telephone, computer, or electronic system designated by the director. The director may accept payment by wire transfer, electronic transfer, or a nationally recognized credit or debit card for licenses issued pursuant to this section. A reasonable fee not exceeding the discount charged by the credit card issuer may be added to the payment as a service charge for the acceptance of the credit or debit card. The director shall determine which nationally recognized cards will be accepted for payments made under this section. If payment is made by a credit or debit card, the liability for a license purchased under this section is not discharged until the director receives payment or credit from the institution responsible for making the payment or credit.

**SECTION 2.** Section 20.1-03-33 of the North Dakota Century Code is created and enacted as follows:

**20.1-03-33. When an individual considered licensed.** An individual is considered licensed upon:

1. Submittal of any required information;
2. Payment of the appropriate fee; and
3. Approval of the director or representatives designated by the director.

**SECTION 3.** Section 20.1-03-34 of the North Dakota Century Code is created and enacted as follows:

**20.1-03-34. Signature and possession requirements.** Signature and possession of license requirements may be waived by the director by rule for individuals licensed through license systems established under section 20.1-03-32.

Approved March 7, 1995  
Filed March 7, 1995

## CHAPTER 234

## HOUSE BILL NO. 1370

(Representatives Brown, Delzer, Hanson, Stenehjem)

(Senators Sand, B. Stenehjem)

MOUNTAIN LION, WOLF, AND WOLF HYBRID  
IDENTIFICATION

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to the identification of mountain lions, wolves, and wolf hybrids held in captivity; and to amend and reenact section 20.1-07-04 of the North Dakota Century Code, relating to the destruction and disposition of depredating fur-bearing animals.

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

SECTION 1. AMENDMENT. Section 20.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-07-04. Depredating fur-bearing animals - Destruction and disposition. A landowner or tenant or that person's agent may catch or kill any wild fur-bearing animal that is committing depredations upon that person's poultry, domestic animals, or crops. A landowner or tenant or that person's agent shall notify and obtain the approval of the ~~commissioner~~ director before catching or killing a ~~mountain lion or~~ black bear. Except as provided in this section, a landowner or tenant or that person's agent may not commercialize in, sell, or ship an animal or the pelt or any part of an animal caught or killed under this section during the closed season. The landowner or tenant or that person's agent may possess a ~~mountain lion or~~ black bear killed under this section.

SECTION 2. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Mountain lions, wolves, and wolf hybrids held in captivity - Identification required. Any person who keeps a mountain lion, wolf, or wolf hybrid in captivity must obtain an identification number from the board. The number must be tattooed in indelible ink inside the ear of the animal for permanent identification purposes.

Approved March 21, 1995

Filed March 21, 1995

## CHAPTER 235

### SENATE BILL NO. 2493

(Senator Grindberg)  
(Representative Clayburgh)

### FUR-BEARERS TAKING FOR WILDLIFE MANAGEMENT

AN ACT to amend and reenact section 20.1-07-05 of the North Dakota Century Code, relating to the taking of protected fur-bearing animals for wildlife management purposes; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 20.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-07-05. Manner of taking protected fur-bearing animals restricted - Destruction of property of others unlawful - Penalty.** It is unlawful to molest or destroy the natural burrow, den, or retreat of any protected fur-bearer, or to damage or injure the property of another while taking or attempting to take that fur-bearer. The governor, at the advice of the director, may by proclamation determine the manner in which fur-bearing animals may be taken in accordance with this section. The director, by permit, may allow the taking of fur-bearing animals for wildlife management purposes. Any person who violates this section is guilty of a class 2 noncriminal offense.

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

Approved March 2, 1995  
Filed March 3, 1995

**CHAPTER 236****HOUSE BILL NO. 1106**

(Representative D. Henegar)

(Senator Robinson)

(At the request of the Game and Fish Department)

**MUZZLELOADING FIREARMS**

AN ACT to amend and reenact section 20.1-08-04.5 of the North Dakota Century Code, relating to the governor's proclamation concerning the hunting of deer with muzzleloading firearms.

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

**SECTION 1. AMENDMENT.** Section 20.1-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-08-04.5. Governor's proclamation concerning the hunting of deer with muzzleloading long guns firearms.** The governor shall by proclamation provide for a one-week season following the regular deer hunting season to hunt deer with muzzleloading long guns firearms in the manner, number, places, and times as the governor prescribes. Licenses to hunt deer with muzzleloading long guns firearms must be issued by the director by lottery as prescribed by the director, with a maximum of seven hundred licenses issued each season. ~~As used in this section, the term "muzzleloading long gun" means any forty-five or larger caliber long gun loaded through the muzzle.~~

Approved March 7, 1995

Filed March 7, 1995

## CHAPTER 237

### HOUSE BILL NO. 1375

(Representatives K. Henegar, Hanson, Sveen, Torgerson)  
(Senators Kringstad, B. Stenehjelm)

### PERSONAL WATERCRAFT

AN ACT to create and enact two new subsections to section 20.1-01-02 of the North Dakota Century Code, relating to definitions for the purpose of the regulation of boating; and to amend and reenact section 20.1-13-07 of the North Dakota Century Code, relating to the operation of motorboats, vessels, and personal watercraft.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>139</sup> SECTION 1. Two new subsections to section 20.1-01-02 of the 1993 Supplement to the North Dakota Century Code are created and enacted as follows:

"Personal watercraft" means a motorboat that is powered by an inboard motor powering a water jet pump or by an inboard or outboard marine engine and which is designed to be operated by a person sitting, standing, or kneeling on the craft, rather than in a conventional manner of sitting or standing inside a motorboat.

"Slow or no wake speed" means the slowest possible speed necessary to maintain steerage.

SECTION 2. AMENDMENT. Section 20.1-13-07 of the North Dakota Century Code is amended and reenacted as follows:

#### 20.1-13-07. Prohibited operation - Penalty.

1. No person may operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person. Reckless or negligent operation of a motorboat or vessel includes weaving through congested motorboat or vessel traffic, jumping the wake of another motorboat or vessel within one hundred feet [30.48 meters] of the motorboat or vessel, or in any other manner that is not reasonable or prudent.
2. No person may operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.
3. No person under twelve years of age may operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by

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<sup>139</sup> Section 20.1-01-02 was also amended by section 3 of Senate Bill No. 2505, chapter 347.

a person eighteen years of age or older. Any person who violates this subsection is guilty of a class 2 noncriminal offense.

4. No person of twelve through fifteen years of age may operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a person eighteen years of age or older or the operator has taken and passed a boating course approved by the department. Any person who violates this subsection is guilty of a class 2 noncriminal offense.
5. No person may cause or knowingly permit a minor under sixteen years of age to operate a motorboat propelled by over a ten horsepower motor unless the minor is otherwise authorized to do so by this section.
6. No person may operate a motorboat or vessel within one hundred feet [30.48 meters] of a person fishing from a shoreline, swimmer, swimming diving raft, or an occupied, anchored or nonmotorized, vessel, or within two hundred fifty feet [76.20 meters] of a reduced speed or slow or no wake sign at greater than slow or no wake speed.
7. No person may operate or permit the operation of a personal watercraft:
  - a. Without each person on board the personal watercraft wearing a United States coast guard approved type I, II, III, or V personal flotation device;
  - b. Within one hundred feet [30.48 meters] of a person fishing from a shoreline, swimmer, swimming diving raft, or an occupied, anchored or nonmotorized, vessel at greater than slow or no wake speed;
  - c. While towing a person on water skis, a kneeboard, an inflatable craft, or any other device unless an observer is on board;
  - d. Without a lanyard-type engine cutoff switch being attached to the person, clothing, or personal flotation device of the operator, if the personal watercraft is equipped by the manufacturer with such a device;
  - e. If any part of the spring-loaded throttle mechanism has been removed, altered, or tampered with so as to interfere with the return-to-idle system;
  - f. To chase or harass wildlife;
  - g. Through emergent or floating vegetation at other than slow or no wake speed;
  - h. In a manner that unreasonably or unnecessarily endangers life, limb, or property, including weaving through congested watercraft traffic, jumping the wake of another watercraft within one hundred feet [30.48 meters] of the other watercraft; or

- i. In any other manner that is not reasonable and prudent.

Approved April 6, 1995  
Filed April 6, 1995

# GOVERNMENTAL FINANCE

## CHAPTER 238

### SENATE BILL NO. 2217

(Senator Lips)

## CITY BONDS FOR HIGHER EDUCATION PROJECTS

AN ACT to create and enact a new subdivision to subsection 2 of section 21-03-06 of the North Dakota Century Code, relating to city bond issues to provide local matching funds for capital construction projects at state higher education institutions.

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

**SECTION 1.** A new subdivision to subsection 2 of section 21-03-06 of the North Dakota Century Code is created and enacted as follows:

To provide required matching funds for a capital construction project at a state institution of higher education located within the city for which an appropriation has been made by the legislative assembly. Bonds issued under this subdivision are deemed to be issued for corporation purposes under subsection 5 of section 40-05-01.

Approved March 7, 1995  
Filed March 7, 1995



## CHAPTER 239

### SENATE BILL NO. 2442

(Senators Langley, Urlacher, Wogsland)  
(Representatives Laughlin, Nicholas)

## HIGHWAY BOND NOTICES

AN ACT to amend and reenact subsection 3 of section 21-03-07 of the North Dakota Century Code, relating to notice of the issuance of bonds by municipalities for highway projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 21-03-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal-aid highway project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or any of them, including, but without limitation, the cost of any construction, improvement, financing, planning, and acquisition of right of way of a federal-aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the roadway thereof greater than that required for federal or state highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights; provided, that the portion of the total cost of such project to be paid by the municipality under such agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed may not be included in

computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless such work is actually called for by the agreement between the municipality and the other governmental agencies involved.

Approved April 17, 1995

Filed April 18, 1995

**CHAPTER 240****HOUSE BILL NO. 1189**

(Representative Wardner)

**STUDENT FINANCIAL INSTITUTIONS**

AN ACT to amend and reenact subsection 5 of section 21-04-01 of the North Dakota Century Code, relating to excluding funds deposited in a student financial institution from the definition of public funds.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 21-04-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Public funds" includes all funds derived from taxation, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state have legal custody. ~~They include the~~ The term includes funds of which any board, bureau, commission, or individual, created or authorized by law, is authorized to have control as the legal custodian for any purpose whatsoever whether such funds were derived from general or special taxation or the assessment of persons or corporations for a specific purpose. The term does not include funds of students or student organizations deposited in a student financial institution approved by and under the control of the school board.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 241****HOUSE BILL NO. 1079**

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

**SECURITY CUSTODIAN APPROVAL BY STATE  
AUDITOR**

AN ACT to amend and reenact section 21-04-09 of the North Dakota Century Code, relating to approval of custodians for safekeeping securities pledged in place of depository bonds.

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

<sup>140</sup> **SECTION 1. AMENDMENT.** Section 21-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**21-04-09. Pledge of security in place of depository bond.** The board of any public corporation may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, such board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities which are eligible for such pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. Such securities may be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon; ~~which financial institution prior thereto has been approved as a custodian for such purpose by the state auditor.~~ Whenever any such securities are so deposited for safekeeping with any custodian, such custodian shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging such securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities so pledged. The securities so substituted must, at the time of such substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

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<sup>140</sup> Section 21-04-09 was also amended by section 2 of Senate Bill No. 2314, chapter 93.

In the event of such substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered or certified mail to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution to the extent that such deposits are insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or the national credit union association.

Approved March 1, 1995

Filed March 2, 1995

## CHAPTER 242

## HOUSE BILL NO. 1246

(Representative Martinson)

## POLITICAL SUBDIVISION INVESTMENTS

AN ACT to amend and reenact section 21-06-07 of the North Dakota Century Code, relating to investment of funds by political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>141</sup> SECTION 1. AMENDMENT. Section 21-06-07 of the North Dakota Century Code is amended and reenacted as follows:

21-06-07. Political subdivisions may invest surpluses funds. ~~From and after the passage and approval of this section, it is lawful for counties~~

1. Counties, cities, school districts, park districts, and townships in this state ~~to may~~ invest ~~surpluses moneys~~ in their general fund, or ~~surpluses balances~~ in any special or temporary fund, in bonds:
  - a. Bonds, treasury bills and notes, or other securities ~~which that~~ are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States ~~or of an instrumentality thereof~~; ~~provided, however, that bonds, or its agencies, instrumentalities, or organizations created by an Act of Congress.~~
  - b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
  - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
  - d. Obligations of the state.
2. Bonds, treasury bills and notes or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities ~~shall be authorized to may~~ convert ~~said those~~ obligations into cash.

Approved April 11, 1995

Filed April 12, 1995

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<sup>141</sup> Section 21-06-07 was also amended by section 3 of Senate Bill No. 2314, chapter 93.

# HEALTH AND SAFETY

## CHAPTER 243

### HOUSE BILL NO. 1058

(Legislative Council)  
(Interim Natural Resources Committee)  
(Representatives Carlisle, Hanson, Coats)  
(Senator Nalewaja)

## STATE DEPARTMENT OF HEALTH NAME CHANGE

AN ACT to rename the state department of health and consolidated laboratories the state department of health; and to amend and reenact section 23-01-01.1 of the North Dakota Century Code, relating to changing references to the state department of health and consolidated laboratories to the state department of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 23-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

23-01-01.1. State department of health ~~and consolidated laboratories~~ to replace state department of health and consolidated laboratories. Wherever the terms "North Dakota state department of health", "state department of health", "department of health", or "health department" ~~appear in this code, the term, "state department of health and consolidated laboratories" must be substituted therefor.~~

~~Wherever the terms, "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", or "state laboratories director" appear in this code, the term "state department of health and consolidated laboratories" must be substituted therefor unless otherwise provided herein.~~

Wherever the terms "state food commissioner and chemist" and "commissioner" when referring to the state food commissioner and chemist appear in chapters 19-17 and 19-18 ~~of the North Dakota Century Code~~, the term "state department of health and consolidated laboratories" must be substituted therefor ~~unless otherwise provided herein.~~

**\* SECTION 2. STATUTORY REFERENCES RELATING TO STATE DEPARTMENT OF HEALTH.** The legislative council may insert appropriate references in the sections of law listed in this section, consistent with usages contained in this Act. References inserted may be adjusted to suit the context and grammar of the sections and must be inserted so as to harmonize existing law with regard to the name changes provided by this Act. The sections of the North Dakota Century Code to which the authority of this section applies are sections 4-18.1-08, 6-09.6-02, 6-09.6-04, 11-19.1-16, 14-02.1-02, 14-02.1-02.1, 14-02.1-07, 14-02.1-07.1, 14-02.1-09, 14-07.1-01, 14-17-04, 15-10-17, 15-21.1-03, 15-52-03, 15-59-02.1, 15-59-05.2, 15-59.3-07, 19-01-01, 19-01-07, 19-02.1-01, 19-02.1-07, 19-02.1-10, 19-02.1-16, 19-03.1-01.1, 19-03.1-17, 19-03.1-37, 19-05.1-05, 19-06.1-05, 19-07-02,

19-10-01, 19-13.1-01, 19-13.1-12, 19-16.1-01, 19-17-05, 19-18-02, 19-20.1-01, 19-21-01, 20.1-03-04, 23-01-01, 23-01-01.1, 23-01-03, 23-01-04.1, 23-01-04.2, 23-01-05, 23-01-06, 23-01-10, 23-01-11, 23-01-14, 23-01-15, 23-01-16, 23-01-18, 23-01-19, 23-01-21, 23-01.1-02, 23-01.1-06, 23-01.1-07, 23-02.1-02, 23-02.1-04, 23-02.1-05, 23-02.1-11, 23-02.1-15, 23-02.1-16, 23-02.1-18, 23-02.1-19, 23-02.1-20, 23-02.1-22, 23-02.1-25, 23-02.1-27, 23-02.1-28, 23-02.1-29, 23-02.1-30, 23-03-07, 23-03-10, 23-04-01, 23-04-02, 23-04-02.1, 23-04-05, 23-04-06, 23-05-01, 23-05-02, 23-06-04, 23-06-07, 23-06-20, 23-06-21, 23-06-22, 23-06-23, 23-06-27, 23-06-30, 23-06.2-11.1, 23-07-01, 23-07-01.1, 23-07-02, 23-07-02.1, 23-07-02.2, 23-07-03, 23-07-05, 23-07-07.5, 23-07-15, 23-07-16.1, 23-07-17.1, 23-07-21, 23-07.3-01, 23-07.4-01, 23-07.4-02, 23-09-01, 23-09-02, 23-09-02.1, 23-09-09, 23-09-10, 23-09-11, 23-09-14, 23-09-16, 23-09-17, 23-09-18, 23-09-19, 23-09-22, 23-09.1-01, 23-09.1-02, 23-09.1-03, 23-09.2-01, 23-09.3-01, 23-09.4-01, 23-10-01, 23-12-10.2, 23-14-01.1, 23-14-07, 23-14-09, 23-16-01, 23-16-03, 23-16-05, 23-16-06, 23-16-09, 23-16-12, 23-16.1-01, 23-17.1-03, 23-17.2-02, 23-17.2-09, 23-17.3-01, 23-17.3-08, 23-17.4-01, 23-19-02, 23-19-03, 23-19-05, 23-19-07, 23-20-03, 23-20-04, 23-20.1-01, 23-20.1-02, 23-20.1-04.5, 23-20.3-02, 23-21-16, 23-21.1-02.1, 23-21.1-03, 23-23-03, 23-25-02, 23-26-02, 23-27-03, 23-27-04.2, 23-29-03, 23-31-01, 23-31-02, 23-31-03, 23-32-01, 23-33-02, 25-01-01.1, 25-17-01, 25-17-02, 25-17-03, 25-17-04, 25-17-05, 26.1-36-08, 26.1-36-09, 27-21-09, 32-37-05, 38-11.1-03.1, 38-11.1-05, 38-14.1-03, 38-14.1-21, 39-26-02, 39-26-10, 43-04-11, 43-10-12, 43-10-23, 43-11-11, 43-15-10, 43-18-02, 43-18-09, 43-26-10, 43-28-02, 43-34-01, 43-35-19, 43-35-19.1, 43-35-19.2, 43-35-20, 43-43-01, 43-48-05, 49-18-31, 50-06-01.2, 50-06-01.4, 50-11.1-07, 50-19-04, 50-19-09, 50-19-10, 50-19-14, 50-21-02, 50-21-03, 50-21-04, 50-24.4-12, 50-25.1-02, 54-06-04, 54-12-08, 54-23.2-04.2, 54-42-06, 54-42-07, 54-42-08, 57-39.2-04, 57-43.2-01, 61-04.1-04, 61-28-02, 61-28.1-02, 61-28.1-03, 61-28.2-01, 61-29-04, 61-30-01, and 65-14-04.

**SECTION 3. MEASURES ENACTED BY THE FIFTY-FOURTH LEGISLATIVE ASSEMBLY RELATING TO STATE DEPARTMENT OF HEALTH.** The legislative council may insert appropriate references in any measure enacted by the fifty-fourth legislative assembly which refers to the terms "North Dakota state department of health and consolidated laboratories" or "state department of health and consolidated laboratories" consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name changes provided by this Act.

**SECTION 4. TRANSITION.** The state department of health shall use all consumables that refer to the department of health and consolidated laboratories before replacing those consumables with consumables that refer to the state department of health. The department shall do everything necessary to minimize the expense of renaming the state department of health and consolidated laboratories the state department of health.

Approved March 21, 1995  
Filed March 23, 1995

\* SECTION 2 was affected as follows:

Section 14-07.1-01 was also amended by section 1 of Senate Bill No. 2397, chapter 150.

Section 15-10-17 was also amended by section 1 of House Bill No. 1277, chapter 168.



Section 15-59-02.1 was also amended by section 1 of House Bill No. 1047, chapter 202, and section 4 of Senate Bill No. 2063, chapter 194.

Section 19-03.1-01.1 was also amended by section 2 of House Bill No. 1403, chapter 217.

Section 19-13.1-01 was also amended by section 1 of Senate Bill No. 2075, chapter 219.

Section 19-13.1-12 was also amended by section 10 of Senate Bill No. 2075, chapter 219.

Section 19-18-02 was also amended by section 19 of Senate Bill No. 2075, chapter 219.

Section 19-20.1-01 was also amended by section 32 of Senate Bill No. 2075, chapter 219.

Section 20.1-03-04 was also amended by section 10 of Senate Bill No. 2012, chapter 34, and section 25 of House Bill No. 1027, chapter 120.

Section 23-01-06 was also amended by section 16 of House Bill No. 1026, chapter 350.

Section 23-02.1-20 was also amended by section 15 of Senate Bill No. 2070, chapter 54.

Section 23-05-02 was also amended by section 1 of Senate Bill No. 2477, chapter 251.

Section 23-09-01 was also amended by section 1 of House Bill No. 1314, chapter 253.

Section 23-17.2-02 was also amended by section 16 of Senate Bill No. 2070, chapter 54, and repealed by section 6 of Senate Bill No. 2460, chapter 254.

Section 23-17.2-09 was repealed by section 6 of Senate Bill No. 2460, chapter 254.

Section 23-17.3-01 was also amended by section 4 of Senate Bill No. 2460, chapter 254.

Section 23-27-04.2 was also amended by section 1 of House Bill No. 1283, chapter 257.

Section 25-01-01.1 was also amended by section 10 of Senate Bill No. 2012, chapter 34.

Section 25-17-01 was also amended by section 2 of House Bill No. 1384, chapter 245.

Section 26.1-36-08 was also amended by section 1 of Senate Bill No. 2480, chapter 288.

Section 26.1-36-09 was also amended by section 1 of Senate Bill No. 2292, chapter 289; section 2 of Senate Bill No. 2480, chapter 288; and section 5

of Senate Bill No. 2080, chapter 329.

Section 43-15-10 was also amended by section 2 of Senate Bill No. 2163, chapter 405, and section 4 of House Bill No. 1403, chapter 217.

Section 49-18-31 was repealed by section 1 of Senate Bill No. 2258, chapter 450.

Section 50-06-01.4 was also amended by section 2 of Senate Bill No. 2181, chapter 458.

Section 50-25.1-02 was also amended by section 1 of Senate Bill No. 2068, chapter 472.

Section 54-06-04 was also amended by section 42 of House Bill No. 1026, chapter 350.

Section 54-12-08 was also amended by section 1 of House Bill No. 1439, chapter 504.

## **CHAPTER 244**

### **HOUSE BILL NO. 1057**

(Legislative Council)  
(Interim Natural Resources Committee)  
(Representatives Oban, Jacobs, Hanson)

### **STATE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES DESIGNATED PRIMARY STATE ENVIRONMENTAL AGENCY**

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to designation of the state department of health and consolidated laboratories as the primary state environmental agency.

**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:

State department of health and consolidated laboratories designated primary state environmental agency. The state department of health and consolidated laboratories is the primary state environmental agency.

Approved March 14, 1995  
Filed March 14, 1995

**CHAPTER 245****HOUSE BILL NO. 1384**

(Representatives Rydell, Svedjan, Glassheim)

**NEWBORN METABOLIC DISEASE SCREENING TESTS**

AN ACT to create and enact a new section to chapter 23-01 and a new subsection to section 25-17-01 of the North Dakota Century Code, relating to the authority of the health council to permit the use of newborn metabolic disease screening tests for research purposes and to the retention and storage of newborn metabolic disease screening tests.

**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:

**Newborn metabolic disease screening tests.** The health council may authorize the use of newborn metabolic disease screening tests, as provided for in chapter 25-17, for research purposes. The council shall adopt rules to ensure that the results are used for legitimate research purposes and to ensure that the confidentiality of the newborns and their families is protected.

<sup>142</sup> **SECTION 2.** A new subsection to section 25-17-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Provide that, upon completion of the testing, the actual testing materials must be returned to the department. The department shall forward the actual testing materials to the university of North Dakota school of medicine for storage and research purposes. The materials in the possession of the university of North Dakota school of medicine may not be destroyed without the authorization of the department.

Approved March 21, 1995  
Filed March 21, 1995

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<sup>142</sup> Section 25-17-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

**CHAPTER 246****HOUSE BILL NO. 1050**

(Legislative Council)

(Interim Health and Communications Committee)

(Representatives Rydell, Svedjan, Dobrinski)

(Senators Mathern, DeMers, Traynor)

**HEALTH CARE REFORM**

AN ACT to create and enact two new sections to chapter 23-01, two new sections to chapter 23-17.5, a new chapter to title 26.1, two new sections to chapter 26.1-36, a new chapter to title 32, and two new sections to chapter 50-24.1 of the North Dakota Century Code, relating to the health council, cost and quality review program, modifying preexisting conditions limitations, providing for guaranteed renewal of health insurance products, modified community rating, insurance reimbursement to advanced registered nurse practitioners, establishing a standard benefits package, establishing limits on damages and contingency fees and providing for alternative dispute resolution for medical malpractice claims, and expanding medical assistance; to amend and reenact sections 23-01-02, 23-17.5-01, 23-17.5-02, 23-17.5-03, 23-17.5-04, 23-17.5-07, 23-17.5-08, 23-17.5-10, 23-17.5-11, subdivision a of subsection 1 of section 26.1-08-05, subsection 2 of section 26.1-08-05, subdivision a of subsection 1 of section 26.1-08-06, subsection 2 of section 26.1-08-06, subsection 9 of section 26.1-17-01, subsection 1 of section 26.1-36-04, subdivision e of subsection 2 of section 26.1-36-04, sections 26.1-36-05, 26.1-36-22, subsections 11 and 23 of section 26.1-36.3-01, and subsection 1 of section 26.1-36.3-04 of the North Dakota Century Code, relating to membership of the health council, supervision of health care provider cooperatives, maximum lifetime benefits of a qualified health coverage plan, guaranteed renewal of health insurance products, modified community rating, insurance reimbursement to advanced registered nurse practitioners, and expansion of medical assistance coverage; to repeal section 26.1-17-12.1 of the North Dakota Century Code, relating to insurance reimbursement for nurses; to provide a penalty; to provide an appropriation; to provide for application and retroactive application; to provide for a legislative council study; 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:

Duties of the health council. The health council shall:

1. Monitor overall health care costs and quality of health care in the state.
2. Recommend to the appropriate interim legislative committees, changes to the health care system in the state.
3. Publish an annual report on health care in the state.

**SECTION 2. AMENDMENT.** Section 23-01-02 of the North Dakota Century Code is amended and reenacted as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of ~~seventeen~~ nine members appointed by the governor in the following manner: ~~Two~~ Four persons from a list of ~~four~~ two submitted by the state hospital association; one of whom must represent a rural hospital and one of whom must represent an urban hospital; one person from a list of two submitted by the state medical association; one person from a list of two submitted by the state long term care association; one person from a list of two submitted by the state dental association; one person from a list of two submitted by the state optometric association; one person from a list of two submitted by the state nurses association; one person from a list of two submitted by the state pharmaceutical association; and nine persons who are consumers of health care services and not employed in the health care field to the health council. One health care consumer member must be a representative of the business community; one health care consumer member must be a representative of the agriculture community; one health care consumer member must be a representative of organized labor; and one health care consumer member must be a representative of elderly citizens. For the purposes of this section, a rural hospital is a hospital located in a city with a population of less than twenty thousand; and an urban hospital is a hospital located in a city with a population of twenty thousand or more the health care field and five persons representing consumer interests. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees must be selected by the chairman of the health council. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings, or in the performance of ~~such~~ any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

SECTION 3. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Health care cost and quality review program - Penalty. The department of health and consolidated laboratories shall conduct a continuous program to review and improve the quality of health care in the state. The department may contract with a qualified person or organization to develop and implement the program. The department shall use the program to compile relevant information about the quality of health care in this state which will allow the department to evaluate the cost, quality, and outcomes of health care. The department shall establish and consult a provider advisory committee composed of health care providers regarding the data that is a cost-effective process for collecting and evaluating the information. The state health officer may assess against a provider a penalty of one hundred dollars per day for each day the provider willfully refuses to provide the department with information requested for use with the program, but the penalty may not exceed one

thousand dollars for each request. A provider against whom a fee is assessed may appeal that assessment to the state health council. If the provider fails to pay the penalty, the health council may, in the county where the provider's principal place of business is located, initiate a civil action against the provider to collect the penalty. As used in this section, "provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or professional practice. The department shall ensure that patient privacy is protected throughout the compilation and use of the information. The department shall evaluate data management capabilities in the state and shall organize its capabilities to provide information about the cost of care on an individual provider basis as well as a collective basis.

**SECTION 4. AMENDMENT.** Section 23-17.5-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Active supervision" means actual state direction, supervision, or control that results in the exercise of power by the department or the attorney general to review anticompetitive conduct that results from, or is authorized by, a cooperative agreement for which a certificate of public advantage has been issued pursuant to this chapter. The term includes the authority granted the department or attorney general by this chapter to terminate or cancel a certificate of public advantage or to investigate or enjoin a cooperative agreement, and other conditions to the certificate provided under section 7 of this Act.

2. "Cooperative agreement" means an:

- a. 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; or
- b. An agreement among two or more health care providers for acquisition of control, consolidation, merger, or sale of assets of those health care providers.

- ~~2-~~ 3. "Department" means the state 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 state department of health and consolidated laboratories to provide health care services in this state who delivers, administers, or supervises health care products or services, for profit or otherwise, in the ordinary course of business or professional practice.

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 5. AMENDMENT.** Section 23-17.5-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-02. Application for cooperative agreements - Departmental review**  
Discussions or negotiations - Certificate of public advantage. A health care provider may discuss preliminary matters toward, or may negotiate, a cooperative agreement with another health care provider or third-party payer if the likely benefits resulting to health care consumers which may result from the agreement outweigh the disadvantages attributable to a potential 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. Although a health care provider or third-party payer is not required to apply for a certificate of public advantage, a party that does not apply for a certificate does not receive the exclusion from state antitrust enforcement and intended federal antitrust immunity provided by section 11 of this Act. 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 6. AMENDMENT.** Section 23-17.5-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-03. 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 which may result from the agreement outweigh ~~any~~ the disadvantages attributable to a potential reduction in competition that may result from the agreement. The department shall consult with the attorney general regarding its evaluation of ~~any~~ a potential reduction in competition resulting which may result from a cooperative agreement.

1. In evaluating the potential likely 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 or services in geographical proximity to the communities traditionally served by those facilities or services;



- 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; and
  - f. Enhancement of the ability to cooperatively provide services to underserved or low-income patients.
2. The department's evaluation of ~~any~~ the disadvantages attributable to ~~any~~ a potential reduction in competition likely to which may 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 likely benefits to health care consumers over disadvantages attributable to ~~any~~ a potential reduction in competition ~~likely to which may~~ result from the agreement.

SECTION 7. A new section to chapter 23-17.5 of the North Dakota Century Code is created and enacted as follows:

Active supervision. The decision granting an application for a certificate of public advantage must include conditions for active supervision. The active supervision must be sufficient for the department to determine periodically whether circumstances may be present to meet the criteria for certificate termination pursuant to section 23-17.5-04, and must otherwise be structured to provide a reasonable basis for state action immunity from federal antitrust laws as interpreted by applicable laws, judicial decisions, opinions of the attorney general, and statements of antitrust enforcement policy issued by the United States department of justice and the federal trade commission. The conditions for active supervision, except the authority granted the department or attorney general by this chapter, may be modified or terminated by agreement between the parties to the cooperative agreement and the department.

SECTION 8. AMENDMENT. Section 23-17.5-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-04. 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, or may result, from ~~a~~ the certified agreement no longer outweigh the disadvantages attributable to a potential or actual reduction in competition ~~resulting~~ which results, or may result, 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 9. AMENDMENT.** Section 23-17.5-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-07. 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 may result from the cooperative agreement outweigh ~~any~~ the disadvantages attributable to a potential reduction in competition ~~that~~ which 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 the disadvantages attributable to a potential reduction in competition ~~likely to~~ which may result from the agreement.

**SECTION 10. AMENDMENT.** Section 23-17.5-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-08. Cancellation of a certificate of public advantage.** If, at any time following the forty-day period specified in section 23-17.5-07, 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 likely or actual benefits to health care consumers which result, or may result, from the agreement and the unavoidable costs of canceling the agreement are outweighed by the disadvantages attributable to a potential or actual reduction in competition ~~resulting~~ which results, or may result, 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 likely or actual benefits to health care consumers which result, or may result, from the agreement and the unavoidable costs of canceling the agreement are outweighed by the disadvantages attributable to any a potential or actual reduction in competition resulting which results, or may result, from the agreement.

<sup>143</sup> SECTION 11. AMENDMENT. Section 23-17.5-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-10. Effective certification - Validity Exclusion from state antitrust enforcement - Federal antitrust immunity intended - 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. A health care provider or third-party payer who participates in the discussion or negotiation of a cooperative agreement for which an application is filed is engaged in conduct for which no action may be brought pursuant to chapter 51-08.1 for penalties, damages, injunctive enforcement, or other remedies. A health care provider or third-party payer who participates in the implementation of a cooperative agreement, for which a certificate of public advantage was issued, is engaged in conduct for which no action may be brought pursuant to chapter 51-08.1 for penalties, damages, injunctive enforcement, or other remedies. The intent of this section is that the conduct be provided state action immunity from federal antitrust laws. This exclusion from state antitrust enforcement and intended federal antitrust immunity applies unless the discussion or negotiation exceeds the scope of a cooperative agreement as authorized by this chapter or the implementation exceeds the scope of the cooperative agreement for which a certificate of public advantage was issued. This section does not exempt hospitals or other health care providers from compliance with laws governing hospital cost reimbursement. This chapter 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 12. AMENDMENT. Section 23-17.5-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-11. 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

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<sup>143</sup> Section 23-17.5-10 was also amended by section 5 of Senate Bill No. 2460, chapter 254.

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, unless the department determines that an extraordinary need exists for an additional amount to ensure effective evaluation of the application or supervision under section 7 of this Act. The parties may require that the determination of the need for an additional amount is subject to approval by the state health council. An appeal may be taken under chapter 28-32 from a determination of the health council. After consultation with the parties, the department may require the payment of the assessment on an incremental basis and may require separate payments for the process of evaluating the application or for the process of active supervision. The assessment may be modified by agreement between the department and the parties to the cooperative agreement. The department shall deposit the moneys received under this section in the health care cooperative agreement fund of the state treasury.

**SECTION 13.** A new section to chapter 23-17.5 of the North Dakota Century Code is created and enacted as follows:

Health care cooperative agreement fund. The funds in the health care cooperative agreement fund are available to the department of health and consolidated laboratories, subject to legislative appropriation, for evaluation and active supervision of cooperative agreements among health care providers or third-party payers and for reimbursement to the attorney general for expenses incurred pursuant to this chapter. Any amounts reimbursed to the attorney general under this section are hereby appropriated.

**SECTION 14. AMENDMENT.** Subdivision a of subsection 1 of section 26.1-08-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. Coverage may be subject to a maximum lifetime benefit of not less than five hundred thousand one million dollars.

**SECTION 15. AMENDMENT.** Subsection 2 of section 26.1-08-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A plan of health coverage is a number one qualified plan A if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which must not be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than five hundred thousand one million dollars.

**SECTION 16. AMENDMENT.** Subdivision a of subsection 1 of section 26.1-08-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than ~~five hundred thousand~~ one million dollars.

**SECTION 17. AMENDMENT.** Subsection 2 of section 26.1-08-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A plan of health coverage is a number one qualified plan B if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which must not be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than ~~five hundred thousand~~ one million dollars.

**SECTION 18. AMENDMENT.** Subsection 9 of section 26.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Practitioner" includes an optometrist, a physician, ~~or a chiropractor, or~~ an advanced registered nurse practitioner duly licensed to practice his or her one's profession under North Dakota law.

**SECTION 19. AMENDMENT.** Subsection 1 of section 26.1-36-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 3, each accident and health insurance policy delivered or issued for delivery to any person in this state must contain provisions described in this section. The provisions contained in any policy may not be less favorable in any respect to the insured or the beneficiary.
  - a. A provision that the policy, including the endorsements and the attached papers, if any, constitutes the entire insurance contract and that no change in the policy is valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to the policy.
  - b. A provision that no agent has authority to change the policy or to waive any of its provisions.
  - c. A provision that the validity of the policy may not be contested except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that the validity of the policy may not be contested on the basis of a statement made relating to insurability by any person covered under the policy after the insurance has been in force for two years during the person's lifetime unless the statement is contained in a written instrument

signed by the person making the statement; provided, however, that no such provision precludes the assertion at any time of defenses based upon the person's ineligibility for coverage under the policy.

- d. A provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. Any such exclusion or limitation may only apply to a preexisting disease or physical condition which first manifested itself in the five years immediately prior to the effective date of the person's coverage. The exclusion or limitation may not apply to loss incurred or disability commencing after the end of the two-year period commencing on the effective date of the person's coverage.
- e. A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which the policy continues in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder is liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.
- f. A provision that if any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, reinstates the policy; provided, however, that if the insurer or the agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of the application by the insurer or, lacking the approval, upon the forty-fifth day following the date of the conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The policy must provide that the reinstated policy covers only loss resulting from an accidental injury sustained after the date of reinstatement and loss due to any sickness that begins more than ten days after the date. The policy must provide that in all other respects the insured and insurer have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed thereon or attached thereto in connection with the reinstatement. The provision may include a statement that any premium accepted in connection with a reinstatement will be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement. This statement may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.

- g. A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within this time does not invalidate nor reduce any claim if it is shown not to have been reasonably possible to give the notice and that notice was given as soon as was reasonably possible.
- h. A provision that the insurer will furnish to the person making claim, or to the policyholder for delivery to such person, the forms usually furnished for filing proof of loss. If the forms are not furnished before the expiration of fifteen days after the insurer receives notice of any claim under the policy, the person making the claim is deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claims are made.
- i. A provision that in the case of claim for loss of time for disability, written proof of loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, and that subsequent written proof of continuance of the disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of loss must be furnished to the insurer within ninety days after the date of loss. Failure to furnish the proof within this time does not invalidate nor reduce any claim if it was not reasonably possible to furnish the proof within that time, provided the proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required.
- j. A provision that all benefits payable under the policy other than benefits for loss of time will be payable according to the provisions of section 26.1-36-37.1, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid as soon as possible after receipt of proof of loss.
- k. A provision that benefits for loss of life of the person insured will be payable to the beneficiary designated by the insured person. However, if the policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms. In either case, payment of these benefits is subject to the provisions of the policy in the event no such designated or specified beneficiary is living at the death of the insured person. All other benefits of the policy are payable to the insured person. The policy may also provide that if any benefit is payable to the estate of a person, or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay the benefit, up to an amount not exceeding five thousand dollars, to any relative by blood or connection by marriage of the person deemed by the insurer to be equitably entitled to the benefit.

- l. A provision that the insurer may examine the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy and also may make an autopsy in case of death where the autopsy is not prohibited by law.
- m. A provision that no action may be brought to recover on the policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of the policy and that no such action may be brought at all unless brought within three years from the expiration of the time which proof of loss is required by the policy.
- n. ~~A provision that benefits under the policy may not be denied for any health care service performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met: (1) the service performed is within the scope of the registered nurse's license; (2) the policy currently provides benefits for identical services performed by a provider of health care licensed by this state; (3) the service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and (4) the policy does not offer, at the option of the policyholder, coverage for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1. No lack of signature, referral, or employment by any other health care provider, and no provision of chapter 43-17 may be asserted to deny benefits under this provision.~~
- o. A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death the portion of the premium, fees, or other sum paid beyond the month of death after deducting any claim for losses during the current term of the policy. This provision does not apply where the insurer has a valid defense to the payment of benefits under the policy.

**SECTION 20. AMENDMENT.** Subdivision e of subsection 2 of section 26.1-36-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. ~~A Subject to section 22 of this Act,~~ a provision that the insurer may cancel the policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, the cancellation is effective; and after the policy has been continued beyond its original term the insured may cancel the policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in the notice. The provision must provide that in the event of cancellation, the insurer will return promptly the unearned portion of any premium paid, and, if the insured cancels, the earned premium will be computed by the use of the short-rate table last filed in the state where the insured resided when the policy was issued. The provision must provide that if the insurer cancels, the earned premium shall be computed pro rata. The provision must



provide that cancellation is without prejudice to any claim originating prior to the effective date of cancellation.

<sup>144</sup> **SECTION 21. AMENDMENT.** Section 26.1-36-05 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-05. Group health policy or service contract standard provisions.** Neither a group health insurance policy nor a group health service contract may be delivered in this state unless it contains in substance the following provisions, or provisions that in the opinion of the commissioner are more favorable to the persons insured and more favorable to the policyholder or contractholder; provided, however, that subsections 5, 7, and 12 do not apply to credit accident and health insurance policies, that the standard provisions required for individual health insurance policies do not apply to group health insurance policies, and that if any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy or contract, the insurer shall omit from the policy or contract any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision ~~in such manner as~~ to make the provision ~~as~~ contained in the policy or contract consistent with the coverage provided by the policy or contract:

1. A provision that the policyholder or contractholder is entitled to a grace period of fifteen days for monthly premiums and thirty-one days for all others for the payment of any premium due except the first, during which the policy or contract continues in force, unless the policyholder or contractholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy or contract. The policy or contract may provide that the policyholder or contractholder is liable to the insurer for the payment of a pro rata premium for the time the policy or contract was in force during the grace period.
2. A provision that the validity of the policy or contract may not be contested except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that the validity of the policy or contract may not be contested on the basis of a statement made relating to insurability by any person covered under the policy or contract after the insurance has been in force for two years during the person's lifetime unless the statement is contained in a written instrument signed by the person making the statement; provided, however, that no such provision precludes the assertion at any time of defenses based upon the person's ineligibility for coverage under the policy or contract.
3. A provision that a copy of the application, if any, of the policyholder or contractholder will be attached to the policy or contract when issued, that all statements made by the policyholder or contractholder or by the persons insured are deemed representations and not warranties, and that no statement made by any insured person may be used in any contest unless a copy of the instrument containing the statement is or has been

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<sup>144</sup> Section 26.1-36-05 was also amended by section 9 of Senate Bill No. 2162, chapter 276.

furnished to that person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative.

4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the individual's coverage.
5. A provision specifying the additional exclusions or limitations, if any, applicable under the policy or contract with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy or contract. Any such exclusion or limitation may only apply to a disease or physical condition for which medical advice or treatment was received by the person during the twelve months prior to before the effective date of the person's coverage. The exclusion or limitation may not apply to loss incurred or disability commencing after the earlier of the end of a continuance period of twelve months commencing on or after the effective date of the person's coverage during all of which the person has received no medical advice or treatment in connection with such disease or physical condition, or the end of the two-year period commencing on the effective date of the person's coverage.
6. If the premiums or benefits vary by age, a provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event the age of a covered person has been misstated. The provision must contain a clear statement of the method of adjustment to be used.
7. A provision that the insurer will issue to the policyholder or contractholder for delivery to each person insured a certificate setting forth a statement as to the insurance protection to which that person is entitled, to whom the insurance benefits are payable, and a statement as to any family member's or dependent's coverage.
8. A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy or contract. Failure to give notice within this time does not invalidate nor reduce any claim if it is shown that it was not to ~~have been~~ reasonably possible to give the notice and that notice was given as soon as was reasonably possible.
9. A provision that the insurer will furnish to the person making claim, or to the policyholder or contractholder for delivery to ~~such the person making claim~~, the forms usually furnished for filing proof of loss. If the forms are not furnished before the expiration of fifteen days after the insurer receives notice of any claim under the policy or contract, the person making the claim is deemed to have complied with the requirements of the policy or contract as to proof of loss upon submitting within the time fixed in the policy or contract for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which ~~claims are~~ claim is made.
10. A provision that in the case of claim for loss of time for disability, written proof of loss must be furnished to the insurer within ninety days

after the commencement of the period for which the insurer is liable, and that subsequent written proof of continuance of the disability must be furnished to the insurer at ~~such~~ intervals ~~as~~ the insurer may reasonably require, and that in the case of claim for any other loss, written proof of loss must be furnished to the insurer within ninety days after the date of loss. Failure to furnish the proof within this time does not invalidate nor reduce any claim if it was not reasonably possible to furnish the proof within that time, provided the proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required.

11. A provision that all benefits payable under the policy or contract other than benefits for loss of time will be payable not more than sixty days after receipt of proof, and that, subject to due proof of loss, all accrued benefits payable under the policy or contract for loss of time will be paid ~~not less frequently than~~ at least monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of ~~such~~ that period will be paid as soon as possible after receipt of proof of loss.
12. A provision that benefits for loss of life of the person insured will be payable to the beneficiary designated by the insured person. ~~However, if~~ If the policy or contract contains conditions pertaining to family status, ~~however,~~ the beneficiary may be the family member specified by the policy or contract terms. In either case, payment of these benefits is subject to the provisions of the policy or contract in the event ~~no such~~ the designated or specified beneficiary is not living at the death of the insured person. All other benefits of the policy or contract are payable to the insured person. The policy or contract may also provide that if any benefit is payable to the estate of a person, or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay the benefit, up to an amount not exceeding five thousand dollars, to any relative by blood or connection by marriage of the person deemed by the insurer to be equitably entitled to the benefit.
13. A provision that the insurer may examine the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy or contract and also may make an autopsy in case of death where the autopsy is not prohibited by law.
14. A provision that no action may be brought to recover on the policy or contract prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of the policy or contract and that ~~no such~~ the action may not be brought at all unless brought within three years from the expiration of the time which proof of loss is required by the policy or contract.
15. A provision that benefits under the policy may not be denied for any health care service performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met: (1) the service performed is within the scope of the registered nurse's license; (2) the policy currently provides benefits for identical services performed by a health care provider licensed by this state; (3) the service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and (4) the policy does not offer, at the option of the employer, or the group or association

representative, coverage for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1. No lack of signature, referral, or employment by any other health care provider, and no provision of chapter 43-17 may be asserted to deny benefits under this provision.

**SECTION 22.** A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Application and scope. This chapter applies to all policies issued or renewed after July 31, 1995. The provisions of chapter 26.1-36 apply when not in conflict with this chapter.

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

1. "Insurer" means any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization that provides a plan of health insurance or health benefits subject to state insurance regulation.
2. "Policy" means any hospital or medical or major medical policy, certificate, or subscriber contract issued on a group or individual basis by an insurer. The term does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, limited benefit health insurance, or short-term major medical policies with policy terms no longer than twelve months.

Limits on preexisting conditions provisions. A policy must provide coverage, with respect to a disease or physical condition of a person which existed prior to the effective date of the person's coverage under the policy, except for a preexisting disease or physical condition that was diagnosed or treated within the six months immediately prior to the effective date of the person's coverage. The limitation may not apply to loss incurred after the end of the twelve-month period commencing on the effective date of the person's coverage.

Portability of insurance policies. An insurer shall waive any time period applicable to a preexisting condition, for a policy with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to the services, if the qualifying previous coverage as defined in section 26.1-36.3-01 is continuous until at least ninety days before the effective date of the new coverage. The period of continuous coverage may not include a waiting period or the effective date of the new coverage applied by the insurer.

Guaranteed renewability of health insurance coverage - Discrimination prohibited.

1. An insurer issuing policies under this chapter shall provide for the renewability or continuability of coverage unless:
  - a. The individual or group has failed to pay the required premiums.

- b. The individual or group has misrepresented information or committed fraud with respect to coverage of the individual or group.
  - c. The group has failed to comply with the insurer's minimum participation requirements.
  - d. The insurer has elected to nonrenew all of its policies, other than guaranteed renewable individual policies, in this state. In that case the insurer shall:
    - (1) Provide advance notice of its decision not to renew to the commissioner; and
    - (2) Provide notice of the decision not to renew coverage to every affected insured and to the commissioner at least one hundred eighty days before the nonrenewal of the policy or contract by the insurer. Notice to the commissioner under this paragraph must be provided at least three business days before notice to an affected insured.
- 2. An insurer that elects not to renew a policy as required by this section may not write new business in the individual or group market in this state for a period of five years from the date of notice of its intention not to renew.
- 3. The commissioner may allow an insurer to nonrenew a policy if the commissioner finds that continuation of coverage is not in the best interests of policyholders or it would impair the insurer's ability to meet its contractual obligations. The commissioner shall assist the policyholder in finding replacement coverage.

Modified community rating. Premium rates for individual policies are subject to the following:

- 1. For any class of individuals, the premium rates charged during a rating period to the individuals in that class for the same or similar coverage may not vary by a ratio of more than six to one after August 1, 1995, and by a ratio of more than five to one after August 1, 1996, when age, industry, gender, and duration of coverage of the individuals are considered. Gender and duration of coverage may not be used as a rating factor for policies issued after January 1, 1997.
- 2. An insurer may, in addition to the factors set forth in subsection 1, use geography, family composition, healthy lifestyles, and benefit variations to determine premium rates.
- 3. The commissioner shall design and adopt reporting forms to be used by an insurer to report information as to insurer's experience as to insurance provided under this chapter on a periodic basis to determine the impact of the reforms and implementation of modified community rating contained in this chapter, and the commissioner shall report to the legislative assembly or a committee designated by the legislative council the findings of the commissioner.

**SECTION 23.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health benefits package required. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual or group basis unless the company, corporation, or association actively offers a basic health benefit plan and a standard health benefit plan as approved by the commissioner. The commissioner shall design and adopt a basic health benefit plan and a standard health benefit plan to be offered on an individual and group basis as required by this section. The basic and standard health benefit plans must be those developed under section 26.1-36.3-06. This section does not require a health maintenance organization to provide any benefit it is prohibited from providing under federal law, and does not excuse failure to provide benefits mandated by federal law.

**SECTION 24.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Service of advanced registered nurse practitioner - Direct reimbursement required. The insured or any person covered by a health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis issued, delivered, executed, or renewed by an insurance company, nonprofit health service corporation, or health maintenance organization which provides for reimbursement or payment for services that are within the scope of practice of an advanced registered nurse practitioner who has received an advanced license under rules adopted by the North Dakota board of nursing is entitled to reimbursement or payment for services performed by an advanced registered nurse practitioner and the advanced registered nurse practitioner is entitled to direct reimbursement by the insurer.

**SECTION 25. AMENDMENT.** Section 26.1-36-22 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-22. Group Individual and group health insurance for dependents. A** An individual or group health insurance policy may be extended to insure the individuals, employees, or members with respect to their family members or dependents including dependents of dependents, or any class or classes thereof, subject to the following:

1. The premium for the insurance must be paid either from funds contributed by the employer, union, association, or other person to whom the policy has been issued, or from funds contributed by the covered persons, or from both. A policy on which no part of the premium for the family members or dependents coverage is to be derived from funds contributed by the covered persons must insure all eligible employees or members with respect to their family members or dependents, or any class or classes thereof.
2. An insurer may exclude or limit the coverage on any family member or dependent as to whom evidence of individual insurability is not satisfactory to the insurer.
3. A policy that provides coverage for a dependent child of an employee or other member of the covered group must provide such coverage up to a limiting age of ~~nineteen~~ twenty-two years of age, if the dependent child

physically resides with the employee or other member and is chiefly dependent upon the employee or member for support and maintenance.

4. A policy that provides that coverage for a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy does not operate to terminate the coverage of a dependent child: (a) while the child is a full-time student and has not attained the age of ~~twenty-three~~ twenty-six years of age; or (b) while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

<sup>145</sup> **SECTION 26. AMENDMENT.** Subsection 11 of section 26.1-36.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Dependent" means a spouse, an unmarried child, including a dependent of an unmarried child, under the age of ~~nineteen~~ twenty-two, an unmarried child who is a full-time student under the age of ~~twenty-three~~ twenty-six and who is financially dependent upon the ~~parent enrollee~~, and an unmarried child, including a dependent of an unmarried child, of any age who is medically certified as disabled and dependent upon the parent enrollee as set forth in section 26.1-36-22.

<sup>146</sup> **SECTION 27. AMENDMENT.** Subsection 23 of section 26.1-36.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23. "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under one or more of the following:
  - a. Medicare or, medicaid, civilian health and medical program for uniformed services, Indian health services program, or any other similar publicly sponsored program.
  - b. An employer-based A health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.
  - c. An individual health insurance policy, including coverage issued by a health maintenance organization, nonprofit health service corporation, and fraternal benefit society that provides benefits

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<sup>145</sup> Section 26.1-36.3-01 was also amended by section 10 of Senate Bill No. 2162, chapter 276.

<sup>146</sup> Section 26.1-36.3-01 was also amended by section 10 of Senate Bill No. 2162, chapter 276.

similar to or exceeding the benefits provided under the basic health benefit plan, provided that the policy has been in effect for a period of at least one year.

**SECTION 28. AMENDMENT.** Subsection 1 of section 26.1-36.3-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Premium rates for health benefit plans subject to this chapter and section 26.1-36-37.2 are subject to the following:
  - a. The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than fifteen percent.
  - b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to the employers under the rating system for that class of business, may not vary from the index rate by more than twenty percent of the index rate.
  - c. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:
    - (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;
    - (2) Any adjustment due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; however, the adjustment may not exceed fifteen percent annually and must be adjusted pro rata for rating periods of less than one year; and
    - (3) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.
  - d. Adjustments in rates for claim experience, health status, and duration of coverage may not be charged to individual employees or dependents. Premium rates charged for a health benefit plan may not vary by a ratio of greater than four to one after January 1, 1997. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.



- e. Premium rates for health benefit plans must comply with the requirements of this section notwithstanding any assessment paid or payable by a small employer carrier pursuant to section 26.1-36.3-07.
- f. A small employer carrier may utilize industry as a case characteristic in establishing premium rates, but the highest rate factor associated with any industry classification may not exceed the lowest rate factor associated with any industry classification by more than fifteen percent.
- g. In the case of health benefit plans delivered or issued for delivery before August 1, 1993, a premium rate for a rating period may exceed the ranges set forth in subdivisions a and b of subsection 1 for a period of three years following August 1, 1993. Under this subdivision, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:
  - (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.
  - (2) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the carrier's rate manual for the class of business.
- h.
  - (1) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.
  - (2) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.
- i. For the purposes of this subsection, a health benefit plan that uses a restricted provider network may not be considered similar coverage to a health benefit plan that does not use a restricted provider network, if the use of the restricted provider network results in substantial differences in claims costs.
- j. A small employer carrier may not use case characteristics, other than age, gender, industry, geographic area, family composition, and group size, without prior approval of the commissioner.

Gender may not be used as a case characteristic after January 1, 1996.

k. The commissioner shall adopt rules to:

- (1) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans;
- (2) Prescribe the manner in which case characteristics may be used by small employer carriers; and
- (3) Otherwise implement this section.

**SECTION 29.** A new chapter to title 32 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter:

1. "Alternative dispute resolution" means the resolution of a health care malpractice claim in a manner other than through a health care malpractice action.
2. "Claimant" means any person who alleges a health care malpractice claim, and any person on whose behalf the claim is alleged, including the decedent in the case of an action brought through or on behalf of an estate.
3. "Health care malpractice action" means a claim for relief brought against a health care provider, or other defendant joined in the action, regardless of the theory of liability on which the claim is based, in which the claimant alleges a health care malpractice claim.
4. "Health care malpractice claim" means a claim brought against a health care provider or other defendant joined in a claim alleging that an injury was suffered by the claimant as a result of health care negligence or gross negligence, breach of express or implied warranty or contract, failure to discharge a duty to warn, or failure to obtain consent arising from the provision of or failure to provide health care services.
5. "Health care negligence" means an act or omission by a health care provider which deviates from the applicable standard of care and causes an injury.
6. "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.
7. "Injury" means an injury, illness, disease, or other harm suffered by an individual as a result of the provision of health care services by a health care provider.
8. "Noneconomic damage" means damage arising from pain; suffering; inconvenience; physical impairment; disfigurement; mental anguish;

emotional distress; fear of injury, loss, or illness; loss of society and companionship; loss of consortium; injury to reputation; humiliation; and other nonpecuniary damage incurred by an individual with respect to which a health care malpractice action or claim is pursued.

Noneconomic damages limited - Reduction of award. With respect to a health care malpractice action or claim, the total amount of compensation that may be awarded to a claimant or members of the claimant's family for noneconomic damage resulting from an injury alleged under the action or claim may not exceed five hundred thousand dollars, regardless of the number of health care providers and other defendants against whom the action or claim is brought or the number of actions or claims brought with respect to the injury. With respect to actions heard by a jury, the jury may not be informed of the limitation contained in this section. If necessary, the court shall reduce the damages awarded by a jury to comply with the limitation in this section.

Alternative dispute resolution.

1. Before initiating a health care malpractice action, the attorney representing a claimant shall advise the claimant about all reasonably available alternative dispute resolution options that may be available to the parties to settle the claim.
2. At the earliest opportunity after the attorney for a health care provider has notice of a potential health care malpractice claim or action, the attorney shall advise the health care provider about all reasonably available alternative dispute resolution options that may be available to the parties to settle the claim.
3. The claimant and health care provider shall make a good-faith effort to resolve part or all of the health care malpractice claim through alternative dispute resolution before the claimant initiates a health care malpractice action.
4. The attorneys for the claimant and health care provider shall state in the pleadings that they have complied with subsections 1 and 2 and that the parties have complied with subsection 3.
5. The court may sanction an attorney who fails to comply with subsections 1 or 2.
6. Notwithstanding section 28-26-01, the court may, upon a finding that a party refused to comply with subsection 3, award reasonable actual and statutory costs, including part or all of the attorney's fees to the prevailing party or parties.

Effective date. Within two years of the effective date of this chapter, each medical malpractice insurance provider shall file with the commissioner of insurance, pursuant to chapter 26.1-25, revised rates, rate schedules, or rate manuals for medical malpractice insurance coverages which reflect the projected impacts of this chapter and shall file a statement of the actual impacts of this chapter on the company's rates, rate schedules, or rate manuals no later than February first of each year in 1997, 1998, and 1999.

**SECTION 30.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Medical assistance benefits - Eligibility criteria.

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
  - a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and
  - b. Minors who have countable income that does not exceed an amount determined under subsection 3.
2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.
3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law, that provide an income level for all minors born before September 30, 1983, equal to one hundred percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined, and that do not exceed legislative appropriations for that purpose.

**SECTION 31.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Provider reimbursement rates. If sufficient general fund appropriations are available to increase provider reimbursement rates, the department shall review reimbursement rates paid to providers under this chapter and shall increase the reimbursement rates accordingly.

**SECTION 32. REPEAL.** Section 26.1-17-12.1 of the North Dakota Century Code is repealed.

**SECTION 33. HEALTH CARE COST AND QUALITY REVIEW PROGRAM.** It is the intent of the legislative assembly that an amount equal to at least \$1,000,000 from the general fund for the establishment of a health care cost and quality review program for the biennium beginning July 1, 1995, and ending June 30, 1997, be provided to the state department of health and consolidated laboratories in House Bill No. 1006. The department shall pursue funding from the Robert Wood Johnson foundation to help fund the operations of the health council.

**SECTION 34. EXPANDED MEDICAL ASSISTANCE COVERAGE.** It is the intent of the legislative assembly that an amount equal to at least \$3,000,451 from the general fund for the purpose of expanding medical assistance coverage to children and pregnant women for the biennium beginning July 1, 1995, and ending June 30, 1997, be provided to the department of human services in Senate Bill No. 2012.

**SECTION 35. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much of the sum as may be necessary, to the supreme court if the court initiates a program to develop alternative dispute resolution options for

parties in disputes, including health care malpractice claims, for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 36. APPROPRIATION.** There is hereby appropriated out of any moneys in the insurance regulatory trust fund, not otherwise appropriated, the sum of \$96,920, or so much of the sum as may be necessary, to the commissioner of insurance for the purpose of implementing insurance reforms for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 37. APPLICATION OF ACT.** The limitation on noneconomic damages in section 29 of this Act applies to injuries that occur after the effective date of this Act. The duties imposed on parties and counsel in the alternative dispute resolution provision of section 29 apply to health care malpractice claims that accrued before the effective date of this Act.

**SECTION 38. RETROACTIVE APPLICATION OF ACT.** Sections 4 through 13 of this Act apply retroactively to discussions and negotiations for cooperative agreements beginning after July 31, 1993, and any resulting cooperative agreements and certificates of public advantage.

**SECTION 39. LEGISLATIVE COUNCIL STUDY - STUDY OF HEALTH INSURANCE COVERED SERVICES.** The legislative council shall consider studying the feasibility and desirability of requiring mental health services and alcohol and drug addiction related services to be included as health insurance covered services. The study, if conducted, should include a review of other states' programs, the cost-benefit analysis, current treatment practices and results, and the actuarial impact of the inclusion of the services on health insurance plans.

**SECTION 40. EMERGENCY.** Sections 4 through 13 of this Act are declared to be an emergency measure.

Approved April 3, 1995

Filed April 3, 1995

**CHAPTER 247****HOUSE BILL NO. 1321**  
(Representatives Poolman, Kliniske)**EPINEPHRINE ADMINISTRATION RULES**

AN ACT to provide for the adoption of rules by the state health officer for the administration of epinephrine in emergency situations.

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

**SECTION 1.** State health officer may authorize the administration of epinephrine.

1. The state health officer may adopt rules to authorize laypersons to administer epinephrine to persons who have severe adverse reactions to insect stings.
2. A person authorized to administer epinephrine by the state health officer may obtain premeasured doses of epinephrine and the necessary paraphernalia for its administration from any licensed physician or pharmacist.
3. A person authorized to administer epinephrine by the state health officer is not civilly or criminally liable for any act or omission when acting in good faith while rendering emergency treatment to persons who have severe adverse reactions to insect stings, except when the conduct amounts to gross negligence.

Approved March 21, 1995  
Filed March 23, 1995

**CHAPTER 248****HOUSE BILL NO. 1185**

(Representatives Rydell, Svedjan, Kerzman)  
(Senators DeMers, Nalewaja, Traynor)

**IMMUNIZATION DATA EXCHANGE**

AN ACT to provide for the exchange of patient immunization data.

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

**SECTION 1. Immunization data.** Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange data in any manner with one another, with the patient's verbal or written consent, limited to the date and type of immunization administered to a patient, regardless of the date of the immunization, if the person requesting access to the immunization data provides services to the patient.

Approved March 28, 1995

Filed March 29, 1995

**CHAPTER 249****SENATE BILL NO. 2154**

(Judiciary Committee)

(At the request of the State Department of Health and Consolidated  
Laboratories)**ENVIRONMENTAL PERMIT HEARINGS**

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to environmental permit hearings conducted for purposes of receiving public comment.

**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:

**Permit hearings - Exemption from chapters 28-32 and 54-57.** A permit hearing conducted for purposes of receiving public comment under chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, and 61-28.1 is not a contested case under chapter 28-32 and is not subject to the requirements of chapter 54-57.

Approved March 20, 1995

Filed March 20, 1995



## CHAPTER 250

### HOUSE BILL NO. 1318

(Representatives Rydell, Dobrinski)  
(Senators Krebsbach, DeMers)

## TRAUMA AND EMERGENCY MEDICAL SYSTEM

AN ACT to provide for a comprehensive trauma and emergency medical system; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Trauma system established - Duties of health council.** The health council, in conjunction with the state department of health and consolidated laboratories, may establish and maintain a comprehensive trauma system for the state. The trauma system may include standards for the following components:

1. A system plan.
2. Prehospital emergency medical services.
3. Hospitals, for which the standards must include:
  - a. Standards for designation, redesignation, and dedesignation of trauma centers.
  - b. Standards for evaluation and quality improvement programs for designated trauma centers. The standards must require each trauma center to collect quality improvement data and to provide specified portions to the department for use in state and regional trauma quality improvement programs.
  - c. Qualifications for trauma center personnel.
4. A trauma registry. Data in the trauma registry is not subject to subpoena or discovery or introduction into evidence in any civil action. Designated trauma centers must participate in the trauma registry. A hospital not designated as a trauma center must provide to the registry a minimum set of data elements for all trauma patients as determined by the health council.
5. A trauma quality improvement program to monitor the performance of the trauma system. The proceedings and records of the program are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter that is the subject of consideration by the program.

**SECTION 2. Physician immunity for voluntary medical direction.** A physician is immune from liability while providing voluntary medical direction.

**SECTION 3. REPORT TO BUDGET SECTION.** The state trauma program coordinator shall be available to report on the implementation and

effectiveness of the program to the budget section of the legislative council by October 1, 1996.

**SECTION 4. APPROPRIATION.** There is hereby appropriated out of any moneys from special funds derived from federal funds and from other income, the sum of \$100,000, or so much of the sum as may be necessary, to the state department of health and consolidated laboratories for the purpose of establishing a comprehensive trauma and emergency medical system, for the biennium beginning July 1, 1995, and ending June 30, 1997.

Approved April 3, 1995

Filed April 3, 1995

**CHAPTER 251****SENATE BILL NO. 2477**

(Senator Heitkamp)  
(Representatives Grumbo, Huether)

**COUNTY HEALTH PROGRAMS DIRECTOR**

AN ACT to create and enact two new subsections to section 23-05-02 of the North Dakota Century Code, relating to the powers and duties of county boards of health.

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

<sup>147</sup> **SECTION 1.** Two new subsections to section 23-05-02 of the North Dakota Century Code are created and enacted as follows:

To appoint a director of health programs, subject to removal for cause by the board. The board may assign to the director the duties of the county health officer under sections 23-03-07 and 23-03-08. The director shall perform the duties under the direction of the county health officer.

To contract with any person to provide the services necessary to carry out the purposes of the board under this chapter and chapter 23-03.

Approved March 31, 1995  
Filed April 3, 1995

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<sup>147</sup> Section 23-05-02 was also amended by section 2 of House Bill No. 1058, chapter 243.

## CHAPTER 252

### HOUSE BILL NO. 1300

(Representatives Olson, Monson, Christopherson, Gunter)

### COUNTY BURIALS

AN ACT to amend and reenact subsection 4 of section 23-06-03 of the North Dakota Century Code, relating to burial of the dead by county social service boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>148</sup> SECTION 1. AMENDMENT. Subsection 4 of section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

4. If the deceased is survived by no person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for poor relief purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial or cremation. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses, but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The cost of the burial must be paid by the county social service board; subject to the following:
  - a. ~~The sum of eight hundred dollars must be allowed for personal property and burial services furnished by a funeral director or funeral home.~~
  - b. ~~The reasonable costs of transporting the body to the place of burial, but not exceeding one hundred dollars.~~
  - c. ~~The cost of the grave box or vault, not to exceed the sum of two hundred thirty-five dollars; provided that a grave box or vault is required by the cemetery before a burial may be made.~~
  - d. ~~The cost of a grave space; not to exceed the sum of one hundred seventy-five dollars.~~
  - e. ~~Any grave opening and closing expenses; not to exceed the sum of one hundred seventy-five dollars.~~

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<sup>148</sup> Section 23-06-03 was also amended by section 3 of Senate Bill No. 2037, chapter 456.

Payment for services rendered or personal property furnished under subdivisions a, b, and e must be made to the funeral home or funeral director furnishing the same; while payment for a grave space, services rendered, or personal property furnished under subdivisions d and e must be made to the cemetery furnishing the same shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 253****HOUSE BILL NO. 1314**

(Representative Hagle)

(Senator Kelsh)

**FOOD SALVAGE OPERATIONS**

AN ACT to create and enact a new section to chapter 23-09 and a new subsection to section 23-09-17 of the North Dakota Century Code, relating to food salvage operations; and to amend and reenact subsections 2, 5, and 7 of section 23-09-01, sections 23-09.1-02.1, and 23-10-04 of the North Dakota Century Code, relating to definitions for purposes of the regulation of hotels, lodginghouses, restaurants, and boardinghouses and inspections of bed and breakfast facilities and mobile home parks, trailer parks, and campgrounds.

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

<sup>149</sup> **SECTION 1. AMENDMENT.** Subsections 2, 5, and 7 of section 23-09-01 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more. A boardinghouse does not include a facility providing personal care directly or through contract as defined in section 23-09.3-01 or 50-24.5-01.
5. "Hotel" or "motel" includes every building or structure, or any part thereof, kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public for periods of less than one week, whether such accommodations are furnished with or without meals. A hotel or motel does not include a facility providing personal care directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.
7. "Lodginghouse" includes every building or structure, or any part thereof, with accommodations for four or more persons, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished to regular roomers for one week or more. A lodginghouse does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.

**SECTION 2.** A new section to chapter 23-09 of the North Dakota Century Code is created and enacted as follows:

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<sup>149</sup> Section 23-09-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

Salvaged food - License required. It is unlawful for a person to claim to be a salvaged food distributor or to engage in the activity of selling, distributing, or otherwise trafficking in distressed or salvaged food, or both, at wholesale, without a license issued under section 23-09-17 authorizing that person to operate as a salvaged food distributor. A salvaged food distributor license may not be issued absent compliance with this section and any rules adopted to implement this section.

**SECTION 3.** A new subsection to section 23-09-17 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

For a salvaged food distributor, twenty-five dollars.

**SECTION 4. AMENDMENT.** Section 23-09.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.1-02.1. Inspection.** The department shall inspect each bed and breakfast facility at least once ~~per year~~ every two years. Any duly authorized officer, employee, or agent of the department may enter and inspect any property or place on or at which a bed and breakfast facility is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules adopted under this chapter.

**SECTION 5. AMENDMENT.** Section 23-10-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-10-04. Inspection.** The department shall inspect the premises as soon as practical after receiving an application for a mobile home park, trailer park, or campground license. If the department is satisfied from the application and inspection that the mobile home park, trailer park, or campground will not be a source of danger to the health and safety of the occupants or the general public, it shall notify the applicant of its approval of the application and of the amount of the license fee. The department shall have access to and may inspect mobile home parks, trailer parks, and campgrounds at reasonable times. The department shall inspect each mobile home park, trailer park, and campground at least once ~~a year~~ every two years.

Approved March 29, 1995

Filed March 29, 1995

**CHAPTER 254****SENATE BILL NO. 2460**

(Senators Lips, Nalewaja, Thane)  
(Representatives Martinson, Payne, Skarphol)

**CERTIFICATE OF NEED REQUIREMENT ELIMINATED**

AN ACT to require a legislative council study of the state's elderly residents and a study of health care; to create and enact a new section to chapter 23-09.3 and a new section to chapter 23-16 of the North Dakota Century Code, relating to a moratorium on the expansion of long-term and basic care bed capacity; to amend and reenact sections 23-17.3-01 and 23-17.5-10 of the North Dakota Century Code, relating to references to certificates of need to expand hospital facilities; and to repeal chapter 23-17.2 and section 23-17.3-03 of the North Dakota Century Code, relating to certificates of need for expansion of hospital facilities.

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

**SECTION 1. STUDY OF ELDERLY AND STUDY OF HEALTH CARE - REPORT TO LEGISLATIVE COUNCIL.** In conjunction with the department of human services and the health council, the legislative council shall study, hold hearings, and prepare a comprehensive report on the appropriate quantity, distribution, and use of the state's resources and services in addressing the needs of the elderly residents of this state. In conjunction with the health council, the legislative council shall study, hold hearings, and prepare a comprehensive report on the certificate of need process and other means of planning and decisionmaking in relation to growth of the health care industry in North Dakota. The legislative council shall report its findings and recommendations, together with any legislation required to implement any recommendations in the report, to the fifty-fifth legislative assembly.

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

Moratorium on expansion of basic care bed capacity. During the period after July 31, 1995, and before August 1, 1997, the state department of health and consolidated laboratories may not issue a license under this chapter for any additional bed capacity unless the expanded bed capacity was approved by the health council under chapter 23-17.2 before August 1, 1995.

**SECTION 3.** A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

Moratorium on expansion of long-term care bed capacity. Notwithstanding sections 23-16-06 and 23-16-10, during the period after July 31, 1995, and before August 1, 1997, the state department of health and consolidated laboratories may not issue a license for any additional bed capacity unless the expanded bed capacity was approved by the health council under chapter 23-17.2 before August 1, 1995.



<sup>150</sup> **SECTION 4. AMENDMENT.** Section 23-17.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.3-01. Definitions.** In this chapter, unless the context and subject matter otherwise requires:

1. ~~"Certificate of need"~~ means a certificate issued following the review process required pursuant to chapter 23-17.2 and rules and regulations promulgated thereunder.
- ~~2.~~ "Clinical record" means a written account which covers the services the agency provides directly and those provided through arrangements with another agency which account contains pertinent past and current medical, nursing, social, and other therapeutic information, including the plan of treatment.
- ~~3.~~ 2. "Department" means the state department of health and consolidated laboratories.
- ~~4.~~ 3. "Home health agency" means a public or private agency, organization, facility, or subdivision thereof which is engaged in providing home health services to individuals and families where they are presently residing for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.
- ~~5.~~ 4. "Home health aide" means an individual who renders personal related service under the supervision of a registered professional nurse.
- ~~6.~~ 5. "Home health services" means a broad range of health and social services furnished to individuals and families by a home health agency or by others under arrangements with the agency, in the places where the recipients are presently residing. Services must include the services of a currently licensed registered professional nurse and at least one other therapeutic service and may include additional support services. These services may only be provided with the approval of a licensed physician.
- ~~7.~~ 6. "Licensed practical nurse" means one who has met all legal requirements for licensure and holds a current license to practice in North Dakota pursuant to chapter 43-12.1.
- ~~8.~~ 7. "Nursing services" means those services pertaining to the preventive, curative, and restorative aspects of nursing care that are performed by or under the supervision of a registered professional nurse.
- ~~9.~~ 8. "Person" means an individual, firm, partnership, association, corporation, limited liability company, or any other entity, whether organized for profit or not.
- ~~10.~~ 9. "Physician" means any person currently licensed pursuant to chapter 43-17.

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<sup>150</sup> Section 23-17.3-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

- ~~11+~~ 10. "Registered professional nurse" means a registered nurse as defined under chapter 43-12.1.
- ~~12+~~ 11. "Skilled nursing" means professional nursing services rendered by nurses licensed under chapter 43-12.1.
- ~~13+~~ 12. "Supportive services" includes the use of medical appliances; medical supplies, other than drugs and biologicals prescribed by a physician; the collection of blood and other samples for laboratory analysis; and nutritional guidance, homemaker, or companion services.
- ~~14+~~ 13. "Therapeutic services" means services which include:
- a. Skilled nursing care.
  - b. Medical social services.
  - c. Home health aide services.
  - d. Physical, occupational, or speech therapy.
  - e. Respiratory therapy.

<sup>151</sup> **SECTION 5. AMENDMENT.** Section 23-17.5-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-17.5-10. 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 chapter 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.~~

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<sup>151</sup> Section 23-17.5-10 was also amended by section 11 of House Bill No. 1050, chapter 246.

**\* SECTION 6. REPEAL.** Chapter 23-17.2 and section 23-17.3-03 of the North Dakota Century Code are repealed.

Approved March 21, 1995

Filed March 23, 1995

**\* SECTION 6** was affected as follows:

Section 23-17.2-02 was also amended by section 16 of Senate Bill No. 2070, chapter 54, and section 2 of House Bill No. 1058, chapter 243.

Section 23-17.2-09 was amended by section 2 of House Bill No. 1058, chapter 243.

**CHAPTER 255****SENATE BILL NO. 2224**

(Senator Tennesfos)  
(Representative Gorman)

**INFORMED CONSENT FOR INCAPACITATED  
PERSONS**

AN ACT to amend and reenact subsection 1 of section 23-12-13 of the North Dakota Century Code, relating to the order of priority of persons authorized to provide informed consent to health care for an incapacitated person.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-12-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ may 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, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;~~
  - b. The appointed guardian or custodian of the patient, if any;
  - 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.

Approved March 10, 1995

Filed March 13, 1995

## CHAPTER 256

## SENATE BILL NO. 2299

(Senators DeMers, Goetz, Yockim)

(Representatives Olson, Dobrinski, Hagle)

## PREHOSPITAL EMERGENCY MEDICAL SERVICES

AN ACT to amend and reenact section 23-27-04.1 of the North Dakota Century Code, relating to prehospital emergency medical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.1. Emergency care or services rendered by officers, employees, or agents of ~~ambulance~~ prehospital emergency medical service - Physician medical direction. No officer, employee, or agent of any ~~ambulance~~ prehospital emergency medical service ~~licensed to operate in this state and no physician licensed in this state who provides medical direction to any prehospital emergency medical service,~~ who is a volunteer, who in good faith renders emergency care ~~or,~~ services ~~at the scene of an accident, disaster, or other emergency, or in going to the scene, or en route to a treatment facility,~~ or medical direction, is liable to the recipient of the emergency care ~~or,~~ services, or medical direction for any civil damages resulting from any acts or omissions by the person in rendering the emergency care ~~or,~~ services, or medical direction provided the person is properly trained according to law. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered, provided that the fees do not exceed twenty-four hundred dollars in any calendar year. For volunteer physicians providing medical direction to prehospital emergency medical services, the twenty-four hundred dollar maximum fees amount is to be calculated separately for each prehospital emergency medical service for which the physician volunteered medical direction. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 257

## HOUSE BILL NO. 1283

(Representatives Dobrinski, Grumbo)

PREHOSPITAL EMERGENCY MEDICAL SERVICE  
STATE ASSISTANCE

AN ACT to amend and reenact section 23-27-04.2 of the North Dakota Century Code, relating to state assistance for prehospital emergency medical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>152</sup> SECTION 1. AMENDMENT. Section 23-27-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.2. Licensed ambulance Prehospital emergency medical services - State assistance.** The health services branch of the state department of health and consolidated laboratories shall assist in the training of personnel of certain ~~ambulance~~ prehospital emergency medical services ~~licensed under this chapter~~ as determined by the branch and financially shall assist certain ~~ambulance~~ prehospital emergency medical services ~~licensed under this chapter~~ as determined by the branch in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The health services branch shall adopt criteria for eligibility for assistance in the training of personnel of various types of ~~licensed ambulance~~ a prehospital emergency medical services. To qualify for financial assistance for equipment, a ~~licensed ambulance~~ prehospital emergency medical service shall certify, in the manner required by the health services branch, that the service has fifty percent of the amount of funds necessary for identified equipment acquisitions. The health services branch shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The health services branch may establish minimum and maximum amounts of financial assistance to be provided ~~an ambulance~~ a prehospital emergency medical service under this section. If applications for financial assistance exceed the amount of allocated and available funds, the health services branch may prorate the funds among the applicants in accordance with criteria adopted by the health services branch. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

Approved March 10, 1995

Filed March 13, 1995

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<sup>152</sup> Section 23-27-04.2 was also amended by section 2 of House Bill No. 1058, chapter 243.

## CHAPTER 258

## SENATE BILL NO. 2103

(Senators Solberg, Sand, Nalewaja)  
(Representatives Drovdal, DeKrey, Klein)

SOLID WASTE MANAGEMENT DISTRICTS AND  
SURCHARGE

AN ACT to amend and reenact sections 23-29-06 and 23-29-07 of the North Dakota Century Code, relating to solid waste management districts and solid waste management facility permits; to repeal sections 23-29-06, 23-29-06.1, 23-29-06.2, 23-29-06.3, 23-29-06.4, 23-29-07.3, and 23-29-07.4 of the North Dakota Century Code, relating to the solid waste management districts and solid waste management surcharge; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-29-06. District solid waste management - ~~Penalty.~~**

1. All land in ~~this state~~ Benson, Cavalier, Eddy, Ramsey, Rolette, Towner, Grand Forks, Nelson, Pembina, and Walsh counties must be within a solid waste management district.
2. ~~The boundaries of each district must be established pursuant to chapter 54-40.1 and as delineated by executive order of the governor number 1978-12, affirmed by executive order number 1986-4.~~
3. The governing board of each solid waste management district must include a representative of each county within the district, one representative from cities within each county within the district, a representative of each city in the district which has a population of more than ten thousand, a representative of the licensed disposal facilities within the district, and a representative of the waste haulers within the district. Members representing political subdivisions must be appointed by the subdivisions involved. The members representing licensed disposal facilities and waste haulers must be selected by the members appointed by the political subdivisions from a list of candidates submitted by each of those groups. The members of the board may be the members of the regional planning councils appointed under subdivision a of subsection 1 of section 54-40.1-03.
- 4+ 3. The members of the district board annually shall select a chairman and vice chairman. Each member may receive compensation for service on the board and is entitled to reimbursement of expenses at the rate provided by law for state officials. Any compensation and reimbursement of expenses of the public entity representatives must be made by the governing bodies of the entities making the appointments to the district board and any compensation and reimbursement of expenses of the private entity representatives must be made by the private entity represented by the member.



- 5- 4. A political subdivision may opt ~~out of one to join another~~ solid waste management district ~~and join another~~ if the board of ~~each the~~ district ~~involved the political subdivision wishes to join~~ consents to the change.
- 6- 5. Solid waste must be managed at solid waste management facilities identified in the district's solid waste management plan. ~~A person who violates this subsection is subject to a civil penalty not to exceed twenty-five thousand dollars per day per violation.~~
7. By January 1, 1992, the department shall adopt rules establishing guidelines for the submission of comprehensive solid waste management plans as required under subsection 8.
- 8- 6. By January 1, 1993, each solid waste management district shall submit a comprehensive solid waste management plan to the department for approval. The plan must include the district's ability to properly manage and plan for adequate capacity, accessibility, and waste flow control. The plan must take into consideration existing waste transportation patterns and the ability of existing landfills to handle solid waste.
9. By July 1, 1993, the department shall incorporate all of the district solid waste management plans into a comprehensive statewide solid waste management plan.

SECTION 2. AMENDMENT. Section 23-29-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-29-07. Permits.**

1. The department 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. ~~Upon submission to the department of an application for a solid waste management facility permit, the applicant shall provide written notice of the application to the solid waste management district board of the district in which the facility is to be located.~~ Upon receipt of a permit application, the department shall give public notice, in the official newspaper of the county in which the facility is to be located, that the department is considering an application for a solid waste management facility. The notice must state the name of the applicant, the location of the facility, and a description of the facility. 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 permits are nontransferable, are for a term of not more than ten years from the date of issuance, and are conditioned upon the observance of the laws of the state and the rules adopted under this

chapter. If the jurisdiction with zoning authority over the area in which the solid waste management facility is to be located has not held a public hearing regarding the siting of the facility, the solid waste management district board of the district in which the facility is to be located shall conduct a public meeting to receive comments regarding the siting of the facility before the department may issue a permit for the facility. If the solid waste management district board conducts a public meeting, the board shall forward a copy of the meeting minutes to the department.

2. For any permit application completed after July 1, 1994, the department shall notify the board of county commissioners of a county in which a new solid waste management facility will be located of the department's intention to issue a permit for the facility. The board of county commissioners may call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority of the qualified electors voting in the election vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county.
3. Notwithstanding subsection 2, if the new solid waste management facility for which the permit application was completed after July 1, 1994, will be owned or operated by a solid waste management ~~district board established under section 23-29-06~~ authority, a special election to approve or disapprove of a facility may be called only if the boards of county commissioners from a majority of the counties in the solid waste management district call for a special election. However, a special election must be conducted in each county within the ~~district~~ authority. If a majority of the qualified electors voting in the election vote to disapprove of the facility, the department may not issue the permit.
4. Subsections 2 and 3 do not apply to a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation.

**SECTION 3. REPEAL.** Sections 23-29-06.2, 23-29-06.3, and 23-29-07.3 of the North Dakota Century Code and sections 23-29-06.4 and 23-29-07.4 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 4. REPEAL.** Section 23-29-06.1 of the North Dakota Century Code and section 23-29-06 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 5. EFFECTIVE DATE.** Section 4 of this Act becomes effective on August 1, 1997.

Approved April 12, 1995  
Filed April 13, 1995

# HIGHWAYS AND BRIDGES

## CHAPTER 259

### HOUSE BILL NO. 1342

(Representative Nicholas)

## TRIBAL-DEPARTMENT OF TRANSPORTATION AGREEMENTS

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to agreements between the department of transportation and tribal governments; and to amend and reenact section 54-40.2-02 of the North Dakota Century Code, relating to agreements between public agencies and tribal governments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Director may enter into agreements with tribal governments. Notwithstanding the provisions of chapter 54-40.2, the director may enter into agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges. Each agreement may not exceed twenty-five thousand dollars.

**SECTION 2. AMENDMENT.** Section 54-40.2-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-40.2-02. Authorization to enter agreements - General contents.** Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any disputes. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement. The Indian affairs commission may propose agreements entered into pursuant to this chapter and may assist, at the request of any tribe affected by such an agreement, in the negotiation and development of such agreements. This chapter does not apply to agreements entered into under section 1 of this Act.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 260

### HOUSE BILL NO. 1493

(Representatives Boehm, Drovdal, Klein, Monson)

## BOARD OF HIGHER EDUCATION MOTOR VEHICLES

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to a fleet committee to represent the board of higher education's interests in state-owned motor vehicles; to amend and reenact sections 24-02-03.3 and 24-02-03.4 of the North Dakota Century Code, relating to the central management system for state-owned motor vehicles and the transfer of titles; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 24-02-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-03.3. Central management system for all state-owned licensed motor vehicles.** The director shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to registration under chapters 39-04 and 39-05. The director shall provide a uniform method of documenting the use and cost of operation of motor vehicles in the system. The director shall advise the director of the office of management and budget as to the need to acquire or dispose of system motor vehicles. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent. Every state agency, institution, department, board, bureau, and commission unless exempted by the director must use the system. ~~The board of higher education and institutions under its jurisdiction are not required to use the system.~~

Each entity required to use the system shall submit records of the operation of each vehicle as directed by the director.

**SECTION 2. AMENDMENT.** Section 24-02-03.4 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-03.4. Transfer of motor vehicles.** The title or other documents representing ownership of a motor vehicle owned or leased by the state, ~~except the board of higher education and the institutions under its jurisdiction, must be transferred to the director on July August 1, 1987 1995. The director may assign motor vehicles purchased with federal funds to the original purchaser or may pay the market value of the vehicle to the original purchaser.~~

**SECTION 3.** A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Board of higher education fleet committee. The director shall adopt rules that include provisions for meeting the special motor vehicle-related needs of the board of higher education and institutions under its jurisdiction and for the assignment of motor vehicles purchased with student fees and private or federal funds. The director shall seek advice in adopting these rules from the higher education fleet committee. The commissioner of higher education shall appoint the

fleet committee. The members of the committee must represent the campuses and agriculture.

**SECTION 4. EXPIRATION DATE.** Section 3 of this Act is effective through August 1, 1999, and after that date is ineffective.

Approved April 7, 1995

Filed April 7, 1995

## CHAPTER 261

### SENATE BILL NO. 2399

(Senators Tennefos, Freborg)  
(Representatives Belter, Gorman)

## HIGHWAY CONTRACT ARBITRATION

AN ACT to amend and reenact sections 24-02-26, 24-02-27, and 24-02-28 of the North Dakota Century Code, relating to highway construction or repair contract arbitration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 24-02-26 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-26. Controversies to be arbitrated - Arbitrators - How named.** All controversies arising out of any contract for the construction or repair of highways entered into by the director must be submitted to arbitration as provided in this chapter; if the parties cannot agree and chapter 32-29.2. Any person who voluntarily enters into a contract for the construction or repair of highways must be considered as having agreed to arbitration of all controversies arising out of ~~such~~ that contract. Three ~~For a claim for less than fifty thousand dollars, only one~~ arbitrator may be jointly selected by the parties. For a claim for fifty thousand dollars or more, three persons compose ~~comprise~~ the arbitration board; one of whom must be appointed by each of the parties and the two thus appointed shall name a third.

**SECTION 2. AMENDMENT.** Section 24-02-27 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-27. Arbitration demand - District court may appoint arbitrators if parties fail - Arbitration pool.** Unless a party submits the dispute to the American arbitration association, the arbitrators must be selected in accordance with this section. The party desiring arbitration of claims for more than fifty thousand dollars shall serve a written demand upon the adverse party. The demand must designate an arbitrator and must describe and detail all claim items that are submitted to arbitration. The party served with the demand shall respond in writing within thirty days, and the response must designate a second arbitrator and must explain the respondent's position concerning each claim item. If the respondent does not designate the second arbitrator within thirty days, the claimant may apply to the district court of the judicial district in which the project, or any part of the project, is located for the appointment of the second arbitrator. If the two arbitrators do not designate the third arbitrator within thirty days after the second arbitrator is designated, either party may apply to the district court for the appointment of the third arbitrator. The proceedings in the district court are governed by the rules of civil procedure concerning motions.

All arbitrators must be selected from an arbitration pool which must consist of fifteen members. The members of the pool must be appointed by the governor. The governor shall select members to the arbitration pool from lists submitted by the society of professional engineers, the association of general contractors, and the director. The governor may not select more than five names from any one of the

~~lists submitted. Members of the arbitration pool shall serve a term of two years. If any vacancy occurs for any reason, the governor shall fill the vacancy for the unexpired term in the same manner as the original selection. The parties shall follow the same procedure for claims involving less than fifty thousand dollars, except that the parties shall jointly select the arbitrator after the demand and response.~~

**SECTION 3. AMENDMENT.** Section 24-02-28 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-28. Procedure for arbitration.** After a board of arbitration has been appointed, a submission in writing must be executed as provided in section 32-29.2-01, but the submission must provide for the entry of judgment upon the award by the district court of the county in which the improvement, or some part thereof, involved in the contract is located. The county must be specified in the submission. The submission must be executed by the director. After submission of the arbitration agreement the arbitration must proceed in accordance with the provisions of sections 32-29.2-01 through 32-29.2-20, unless a party submits the dispute to arbitration in accordance with the construction industry arbitration rules of the American arbitration association. If the rules of the American arbitration association conflict with North Dakota law, North Dakota law governs.

Approved April 4, 1995

Filed April 4, 1995

**CHAPTER 262****HOUSE BILL NO. 1324**

(Representatives Sveen, Walker, Kerzman)

**COUNTY ROAD TAX RETENTION**

AN ACT to amend and reenact section 24-05-01 of the North Dakota Century Code, relating to the allocation of county road tax funds.

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

**SECTION 1. AMENDMENT.** Section 24-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**24-05-01. County road tax - Allocation and use of funds.** In each county having a population of two thousand or more, there must be levied and collected a property tax of not less than one-fourth of one mill, nor more than the maximum rate permitted by section 57-15-06, on each dollar of the taxable valuation of all taxable property in the county for the improvement of highways. When authorized by sixty percent of the qualified electors voting upon the question at a regular or special election in the county, the county commissioners may levy and collect a property tax not exceeding the limitation in subsection 14 of section 57-15-06.7. The levy pursuant to such an election may be discontinued at the discretion of the county commissioners; or, upon petition of five percent of the qualified electors of such county, the question of discontinuance of the levy must be submitted to the qualified electors of the county at any regular or special election and, upon a favorable vote of sixty percent of the qualified electors voting, such levy must be discontinued. Of the proceeds of the tax collected on account of property situated within any city, by the county treasurer of the county in which the city is located, twenty percent must be turned over by the treasurer to the auditor of the city, in the manner provided in section 11-13-06 to be expended under the direction of the governing body of the city in the improvement of its streets and highways. ~~All other proceeds~~ The county treasurer shall retain and deposit in a fund known as the county road fund the proceeds of this tax totaling less than twenty dollars in a taxable year which is collected on account of property situated within any city. Proceeds of the tax not turned over to cities pursuant to this section must be kept in a distinct fund to be known as the county road fund and must be expended in the improvement of highways as provided in this chapter under the direction of the board of county commissioners. The provisions of this section in regard to allocation apply to the proceeds of any tax originally levied for other purposes if appropriated or transferred to the county road fund or for expenditure for road and bridge purposes. No allocation pursuant to this section may include the proceeds received by the county as its share of the allocation made pursuant to section 54-27-19, nor may any allocation under this section include moneys received from the state as the result of any other intergovernmental transfer.

Approved March 21, 1995

Filed March 23, 1995



**CHAPTER 263****HOUSE BILL NO. 1394**

(Representatives Laughlin, Bateman, Hagle)

(Senators Kinnoin, G. Nelson, Wogsland)

**SECTION LINE OBSTRUCTION**

AN ACT to amend and reenact subsection 1 of section 24-06-28 of the North Dakota Century Code, relating to the obstruction of section lines.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 24-06-28 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. No person may place or cause to be placed any permanent obstruction, stones, trees, or rubbish within thirty-three feet [10.06 meters] of any section line, unless written permission is first secured from the board of county commissioners or the board of township supervisors, as the case may be. The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.

Approved April 11, 1995

Filed April 12, 1995

## CHAPTER 264

## SENATE BILL NO. 2086

(Senator Solberg)

## OUTDOOR ADVERTISING SIGNS

AN ACT to amend and reenact section 24-17-03 of the North Dakota Century Code, relating to outdoor advertising signs; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-17-03 of the North Dakota Century Code is amended and reenacted as follows:

24-17-03. Limitations of outdoor advertising within six hundred sixty feet [201.17 meters]. Subject to the provisions of this chapter, ~~no sign may~~, after January 1, 1968, or any later date established by the Congress of the United States in relation to 23 U.S.C. 131, or waiver ~~thereof of that date~~ pursuant to ~~said~~ title 23 of the United States Code, no sign may be erected or maintained within six hundred sixty feet [201.17 meters] from the nearest edge of the right of way and visible from the main traveled way of any highway ~~which that~~ is a part of the state highway system in this state except the following:

1. Official signs and notices; and directional signs and notices, ~~which shall include, but not be limited to;~~ including signs and notices pertaining to natural wonders, scenic and historic attractions, and outdoor recreational areas subject to the national standards to be promulgated by the secretary of transportation.
2. Signs advertising the sale or lease of property upon which they are located.
3. Signs specifically advertising activities conducted, services rendered, goods sold, stored, produced, or mined, or the name of the enterprise that is located on the property and which are within fifty feet [15.24 meters] of the area used for the purpose advertised and upon which they are located or on property contiguous to the advertised activity which is under the same ownership, lease, rent, or control as the property with the advertised activity.
4. Signs in unzoned commercial or industrial areas, which now or hereafter qualify as such, pursuant to the agreement between the ~~commissioner~~ director and the secretary of transportation according to 23 U.S.C. 131.
5. Signs relocated by reason of the construction or reconstruction of the state highway system.
6. Official highway signs within interstate rights of way giving specific information for the traveling public pursuant to 23 U.S.C. 131(f) and the rules and regulations promulgated thereunder.
7. Signs calling attention to the location of buried utility lines.

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

Approved March 10, 1995

Filed March 10, 1995

# **MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND, AND DEAF**

## **CHAPTER 265**

### **SENATE BILL NO. 2350**

(Senator Nething)

## **HUMAN SERVICES LAND CONVEYANCE TO JAMESTOWN**

AN ACT to authorize the director of the department of human services to convey certain state-owned land to the city of Jamestown, North Dakota.

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

### **SECTION 1. Transfer of land authorized.**

1. The director of the department of human services may convey to the city of Jamestown, North Dakota, land owned by the state which is located in Stutsman County and described as follows:
  - a. That portion of section five, township one hundred thirty-nine north, range sixty-three west, which runs in a northwest-southeast direction, being bound by that certain township road on the north and east and by the burlington northern railroad right of way on the west and south, excepting all that portion lying within the right of way of interstate highway 94 and the township road. This tract of land comprises approximately eighty-six acres.
  - b. That portion of the north half of the north half of section five, township one hundred thirty-nine north, range sixty-three west, which runs in an east-west direction lying in the northeast corner thereof and including a one-hundred-foot wide tract which extends along a north boundary and immediately adjacent to the south boundary of interstate 94, excepting all that portion lying within the right of way of interstate highway 94. This tract contains approximately fifty-six acres.
2. Any conveyance of the land described in subdivision a of subsection 1 must include a covenant or restriction that the land may not be used for the primary treatment of waste.
3. The conveyance authorized by this Act is exempt from sections 54-01-05.2 and 54-01-05.5.
4. All moneys realized from the sale must be deposited in the general fund in the state treasury.

5. The attorney general shall review and approve as to form and legality all legal documents required for the conveyance authorized by this Act, including title opinions.

Approved April 6, 1995

Filed April 6, 1995

## CHAPTER 266

## HOUSE BILL NO. 1376

(Representatives Svedjan, Mutzenberger)  
(Senators Bowman, W. Stenehjem)

SUPERINTENDENT OF STATE HOSPITAL  
QUALIFICATIONS

AN ACT to create and enact a new section to chapter 25-10 of the North Dakota Century Code, relating to a unified mental health delivery system; and to amend and reenact sections 25-01-03, 25-02-01.1, and 25-02-04 of the North Dakota Century Code, relating to the qualifications and appointment of the superintendent and the medical director of the state hospital and requirements for the formation of a state hospital governing body and delivery of mental health services.

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

SECTION 1. AMENDMENT. Section 25-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-01-03. Supervising officer to appoint superintendent of institutions - Salaries - Removal.** The supervising officer shall appoint a superintendent for each of the institutions under its control, except for the state hospital, where the supervising officer shall appoint a superintendent and a medical director in consultation with a state hospital governing body. The tenure of office of each ~~such~~ superintendent is two years from the date of ~~his~~ the superintendent's appointment, and ~~he shall~~ the superintendent must possess ~~such~~ qualifications ~~as are~~ required by ~~the provisions~~ of this title. Any ~~such~~ superintendent may be removed by the supervising officer for misconduct, neglect of duty, incompetency, or other proper cause showing ~~his~~ the superintendent's inability or refusal properly to perform the duties of ~~his~~ office, but ~~such~~ a removal at a time other than a termination of ~~his~~ the superintendent's two-year tenure may be had only after an opportunity is given to ~~such~~ the person to be heard before a board consisting of the governor, attorney general, and supervising officer of ~~such~~ the institution on preferred written charges. A removal when made, however, is final. The supervising officer shall fix the compensation of each ~~such~~ superintendent within the limits prescribed in this title and within the appropriations made by the legislative assembly for ~~such~~ compensation.

SECTION 2. AMENDMENT. Section 25-02-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**25-02-01.1. Maintenance of state hospital accreditation - Governing body membership - Rulemaking authority.**

1. The department of human services shall seek appropriations and resources sufficient to ensure maintenance of the state hospital's accreditation by the joint commission on accreditation of health care organizations and certification by the health care financing administration or by similar accrediting and certifying organizations and agencies possessing hospital standards recognized by the health care industry and accepted by the department.

2. The department, in consultation with the state hospital, shall create a state hospital governing body and shall by rules describe the powers and duties of the governing body. The department shall compensate and reimburse members not employed by the department in the same manner and amount as members of the legislative council are compensated and reimbursed under section 54-35-10.
3. The governing body must be composed of the executive director of the department of human services; the director of the division of mental health services of the department, who shall serve as chairman of the governing body; the state hospital superintendent; the state hospital medical director; the performance improvement coordinator; a representative of the fiscal management of the state hospital; a mental health services consumer selected by the mental health association; and a legislator selected by the legislative council. The governing body may include other persons as appointed by the governing body.

SECTION 3. AMENDMENT. Section 25-02-04 of the North Dakota Century Code is amended and reenacted as follows:

25-02-04. Superintendent to possess certain qualifications - Medical director - Employees. The superintendent of the state hospital must be a board eligible or board certified psychiatrist. A board eligible psychiatrist appointed as superintendent after July 1, 1989, must accomplish board certification within three years after the date of appointment. The superintendent shall appoint with the approval of the executive director of the department of human services an assistant superintendent of administration who must be under the superintendent's supervision and who must be a qualified and experienced hospital administrator. The superintendent shall appoint and employ the professional staff and define their qualifications and duties skilled health care administrator with professional training and experience relating to the management of facilities for mentally ill and chemically dependent persons and relating to the needs of the mentally ill and chemically dependent persons. A medical director, who must be a licensed physician and board-certified psychiatrist, shall appoint and employ all physicians and clinical staff, define their qualifications and duties, and be responsible for the organization and delivery of medical services at the state hospital. If the superintendent is not a licensed physician and board-certified psychiatrist, the medical director, or a qualified designee of the medical director, shall act as the superintendent's designee in all matters in which the superintendent's opinion on medical or clinical treatment is required by law. Every physician on the professional staff must have a license issued by the state board of medical examiners. The assistant superintendent shall employ such other personnel as may be necessary and shall define their qualifications and duties.

SECTION 4. A new section to chapter 25-10 of the North Dakota Century Code is created and enacted as follows:

Unified mental health delivery system. The division of mental health services shall plan, develop, implement, and supervise a unified mental health delivery system. The system must include the mental health services provided by the regional human service centers, the state hospital, and contracted services with providers in accordance with the state mental health plan.

Approved April 5, 1995

Filed April 5, 1995

## CHAPTER 267

### SENATE BILL NO. 2506 (Senators Streibel, Naaden, St. Aubyn)

#### PROTECTION AND ADVOCACY COMMITTEE MEMBERSHIP

AN ACT to amend and reenact section 25-01.3-02 and subsection 13 of section 25-01.3-06 of the North Dakota Century Code, relating to the members of the committee on protection and advocacy and the authority of the project; to provide for a report to the budget section of the legislative council; and to provide for application of this Act.

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

**SECTION 1. AMENDMENT.** Section 25-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.3-02. Committee on protection and advocacy.** The governor shall appoint a committee on protection and advocacy. The committee must consist on protection and advocacy consists of seven members who broadly represent or are knowledgeable about the needs of the persons served by the protection and advocacy project. The governor shall appoint two members on August 1, 1995. The legislative council shall appoint one member from each house of the legislative assembly on August 1, 1995. The governing board of the North Dakota association for retarded citizens shall appoint one member of the association on August 1, 1995. The governing board of people first of North Dakota shall appoint one member of the association on August 1, 1995. The mental health consumer advocates of North Dakota, inc., shall appoint one of its members on August 1, 1995. The members appointed by the North Dakota association for retarded citizens, people first of North Dakota, and the mental health consumer advocates of North Dakota, inc., must include individuals with disabilities who are eligible for services or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who are eligible for services. Each member appointed by the governor and the legislative council shall serve for a term of two years and until a successor is appointed. The remaining three members shall serve a term of three years and until a successor is appointed. A member may not serve more than six consecutive years. If any vacancy occurs on the committee, the appointing authority shall appoint an individual to fill the vacancy for the remainder of the term, but if the federal government designates a member ineligible, the original appointing body shall fill the vacancy for the unexpired term in a manner that is consistent with federal eligibility requirements. Any vacancy on the committee must be filled within sixty days after the date on which the vacancy occurs. The committee is responsible for and shall adopt rules for the administrative supervision and direction and for the planning, design, implementation, and functioning of the project. The committee shall develop a formal process to review complaints from providers or other persons concerning protection and advocacy activities. The committee in its capacity of supervising and directing the project shall operate independently of the governor or any state agency that provides treatment, services, or habilitation to persons with developmental disabilities or mental illness. The governor, upon compliance with federal law and regulations, may redesignate the agency responsible for carrying out the responsibilities of the project under this chapter.



**SECTION 2. AMENDMENT.** Subsection 13 of section 25-01.3-06 of the North Dakota Century Code is amended and reenacted as follows:

13. Contract with any person, public or private, to carry out any responsibilities of the project under this chapter and sections 25-01-01.1, 50-26-01, 50-26-03, 50-26-04, and ~~57-27-03~~ 50-27-03.

**SECTION 3. REPORT TO BUDGET SECTION.** During the 1995-96 interim, the committee on protection and advocacy shall address the concerns raised in the 1995 performance audit report of the North Dakota protection and advocacy project and the report of the panel of special masters. The committee shall report its progress in addressing these issues to the budget section of the legislative council at the request of the chairman.

**SECTION 4. APPLICATION.** The term of office of any member of the committee on protection and advocacy whose term is not due to end on August 1, 1995, ceases on the effective date of this Act.

Approved April 5, 1995

Filed April 6, 1995

## CHAPTER 268

## SENATE BILL NO. 2430

(Senator Wogsland)

## STATE HOSPITAL TREATMENT PLANS

AN ACT to create and enact two new subsections to section 25-03.1-40 of the North Dakota Century Code, relating to rights of patients; and to amend and reenact section 25-03.1-24 of the North Dakota Century Code, relating to the right to treat.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-24 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-24. Right to treat. State hospital or treatment facility personnel ~~shall be able to~~ may treat a patient with prescribed medication or a less restrictive alternative if, in the opinion of a psychiatrist or physician, these treatments are necessary to prevent bodily harm to the patient or others or to prevent imminent deterioration of the respondent's physical or mental condition and there is not time to obtain a court order. ~~Nothing in this~~ This chapter ~~may be deemed to~~ does not prohibit a hospital from rendering emergency medical care without the need for consultation, if in the exercise of sound medical judgment that care is immediately necessary for the well-being of the patient and delay would endanger the life of or adversely and substantially affect the health of the patient.

SECTION 2. Two new subsections to section 25-03.1-40 of the 1993 Supplement to the North Dakota Century Code are created and enacted as follows:

In a manner appropriate to the patient's capabilities, to ongoing participation in the planning of services.

Not to be required to participate in the development of an individual treatment plan.

Approved April 11, 1995  
Filed April 12, 1995

**CHAPTER 269****SENATE BILL NO. 2381**

(Senators W. Stenehjerm, B. Stenehjerm)  
(Representatives Delmore, Kelsch)

**DETENTION OF MENTALLY ILL OR CHEMICALLY  
DEPENDENT PERSONS**

AN ACT to amend and reenact subsection 1 of section 25-03.1-25 of the North Dakota Century Code, relating to detention of mentally ill or chemically dependent individuals.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 25-03.1-25 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When a peace officer, physician, psychiatrist, psychologist, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26, except that if emergency conditions exist that prevent the immediate conveyance of the individual to a public treatment facility, a private facility that has adequate resources and capacity to hold that individual may hold the individual in anticipation of conveyance to a public treatment facility for up to twenty-three hours:
  - a. Without conducting an immediate examination required under section 25-03.1-26; and
  - b. Without following notice and hearing requirements for a transfer to another treatment facility required under subsection 3 of section 25-03.1-34.

Approved March 15, 1995  
Filed March 15, 1995

**CHAPTER 270****SENATE BILL NO. 2418**

(Senators Mathern, W. Stenehjem)

(Representative Hausauer)

**CHEMICALLY DEPENDENT NONRESIDENT  
TRANSPORTATION**

AN ACT to provide for the transporting of nonresident chemically dependent patients; and to declare an emergency.

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

**SECTION 1. Exchange of chemically dependent patient or prisoner.** The director of the department of human services, a county, a city, or a local law enforcement agency may enter into reciprocal agreements with the appropriate authorities of any other state regarding the mutual exchange, return, and transportation of chemically dependent or mentally ill patients or prisoners who are treated or confined in hospitals of one state for treatment of chemical dependency or mental illness but who have legal residence in another state.

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

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 271****SENATE BILL NO. 2523**

(Senator Wanzek)

(Representatives Carlisle, Hanson, Poolman)

**TREATMENT FACILITY PATIENT RECORD  
CONFIDENTIALITY**

AN ACT to amend and reenact subsection 5 of section 25-03.1-43 of the North Dakota Century Code, relating to the confidentiality of records of treatment facility patients.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 25-03.1-43 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured; ~~the patient's consent is given;~~ and the facility recognizes the project as a bona fide research or statistical undertaking.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 272****HOUSE BILL NO. 1056**

(Legislative Council)  
(Interim Legislative Audit and Fiscal Review Committee)  
(Representative Aarsvold)  
(Senator Tallackson)

**HUMAN SERVICES WRITEOFF REPORTS**

AN ACT to amend and reenact sections 25-04-17 and 50-06.3-08 of the North Dakota Century Code, relating to the timing of reports by the department of human services on the reduction or writeoff of accounts receivable.

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

**SECTION 1. AMENDMENT.** Section 25-04-17 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-17. Reduction or writeoff of accounts - Report to legislative audit and fiscal review committee.** The supervising department may authorize the reduction or writeoff of a patient's past due account from the developmental center's financial records upon determining that the account is not collectible. The supervising department, thirty days by September first after the close of each fiscal year, shall present a detailed report to the legislative audit and fiscal review committee on the status of accounts receivable for that fiscal year. The report must include:

1. An aging by patient classification of accounts remaining unpaid.
2. The amounts by patient classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

**SECTION 2. AMENDMENT.** Section 50-06.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.3-08. Reduction or writeoff of accounts - Reports required.** The department may authorize the reduction or writing off of a recipient's or patient's past due account from the department's financial records upon making a determination that the account is not collectible. The department, thirty days by September first after the close of each fiscal year, shall present a detailed report to the legislative audit and fiscal review committee on the status of accounts receivable for that fiscal year; which. The report must include the following:

1. An aging by recipient classification of accounts remaining unpaid.
2. The amounts by recipient classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

Approved March 1, 1995  
Filed March 1, 1995

CHAPTER 273

HOUSE BILL NO. 1378

(Representatives Gorman, Boucher, Rydell)  
(Senators Nalewaja, Thane, DeMers)

DEVELOPMENTALLY DISABLED FACILITY RETURN  
ON INVESTMENT LIMITS

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to residential care and services for the developmentally disabled.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

Maximum annual return on investment. Profit-motivated institutions or facilities must be allowed an annual return on investment in fixed assets related to client care. The maximum return on investment must be established based upon the existing debt divided by original asset cost and must be determined as follows:

Annual average percentage debt to annual average assets	Return
51 to 80 percent -	2 percent return on original cost of fixed assets
0 to 50 percent -	3 percent return on original cost of fixed assets

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 274****SENATE BILL NO. 2489**

(Senator Lips)

**DEPRECIATION RECAPTURE FOR  
DEVELOPMENTALLY DISABLED PROVIDERS**

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to depreciation recapture from treatment or care centers for the developmentally disabled.

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

**SECTION 1.** A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

**Depreciation recapture on the sale of fixed assets.** When a treatment or care center licensed under this chapter, after the effective date of this Act, sells fixed assets or otherwise removes the assets from service in or to the center, any depreciation expense included in setting the rate paid by the department to that center asserted with respect to that asset is subject to depreciation recapture. The depreciation recapture is to the extent that the sale or disposal price exceeds the undepreciated value of the asset except:

1. If the facility has been owned for twenty years or longer there may be no recapture of depreciation; or
2. If the facility has been owned for more than ten years but for less than twenty years, the depreciation recapture amount must be reduced by ten percent times the number of years the facility is owned after the tenth year.

Approved March 24, 1995  
Filed March 27, 1995



**CHAPTER 275****HOUSE BILL NO. 1379**

(Representatives Gorman, Boucher, Rydell)  
(Senators Nalewaja, Thane, DeMers)

**DEVELOPMENTALLY DISABLED FACILITY OWNER  
COMPENSATION LIMITS**

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to residential care and services for the developmentally disabled.

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

**SECTION 1.** A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

**Owner compensation for services provided.** For-profit companies may compensate working owners and their families for time worked on behalf of the organization. The amount of total annual compensation allowed for an owner acting in an executive or administrative capacity is limited as follows:

Number of clients served	Compensation limit
1 - 15	\$25,000
16 - 30	\$35,000
31 - 45	\$45,000
46 +	\$50,000

The limits in this section are intended to be the total compensation allowed by this state in any one year regardless of the number of owners performing work for the company. A proration of the total compensation for owners who perform services for this state and who perform services for other states must be made on the basis of individual time distribution records.

For family members working in direct care, housekeeping, maintenance, dietary, or clerical positions, wages are limited to the wage paid to any nonrelated employee, with the same qualifications and experience, working in a similar job function for that organization. The allowable compensation limit is inclusive of all salaries and related fringe benefits and may not be construed to be an addition nor enhancement to the current budgetary process in effect on the effective date of this Act.

Approved April 7, 1995  
Filed April 7, 1995

# INSURANCE

## CHAPTER 276

### SENATE BILL NO. 2162

(Industry, Business and Labor Committee)  
(At the request of the Commissioner of Insurance)

### INSURANCE LAW CHANGES

AN ACT to create and enact a new subsection to section 26.1-22.1-06 of the North Dakota Century Code, relating to boiler inspection; and to amend and reenact subsection 10 of section 26.1-01-07, sections 26.1-01-07.5, 26.1-22.1-09, 26.1-22.1-13, 26.1-30-20, subsection 3 of section 26.1-31.2-02, subsection 5 of section 26.1-34-01, subsection 1 of section 26.1-36-05, subsection 27 of section 26.1-36.3-01, subsection 1 of section 26.1-36.3-07, and subdivision g of subsection 3 of section 26.1-38.1-01 of the North Dakota Century Code, relating to fees chargeable by the commissioner of insurance, fire district maps, boiler inspection, policy withdrawal, reinsurance, annuities, group health policies, the small employer health reinsurance program, and the life and health insurance guaranty association.

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

**SECTION 1. AMENDMENT.** Subsection 10 of section 26.1-01-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. For ~~each~~ filing the abstract of the annual statement of an insurance company for publication, ~~ten~~ thirty dollars.

**SECTION 2. AMENDMENT.** Section 26.1-01-07.5 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-07.5. Fire district maps - Insurance applications to show fire district in which property is located - Penalty.** Before December first of each year, the commissioner of insurance shall publish maps of the fire districts of the state for use by insurers under this section for the following calendar year. The state firemen's association and the state fire marshal shall assist the commissioner of insurance in preparing the maps. After December 31, 1993, no insurer may issue or renew a policy for fire, allied lines, ~~multiple peril crop~~, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, or crop hail insurance coverage for property in this state unless the application identifies each fire district in which the insured property is located. The application must identify the property and insured value of the property located within each fire district if the policy provides coverage for property that is not all within a single district. For purposes of this section, "fire district" means rural fire protection district, city, or area served by a certified rural fire department. An insurer that is found by the commissioner to be in violation of this section is subject to a penalty of one hundred dollars for each such violation to be deposited in the insurance tax distribution fund. The commissioner of insurance may adopt rules necessary for administration of this

section, including rules governing preparation, charges for, and use of maps under this section.

**SECTION 3.** A new subsection to section 26.1-22.1-06 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [22.68 kilograms per square centimeter] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

**SECTION 4. AMENDMENT.** Section 26.1-22.1-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-22.1-09. Inspection fees.** Upon completion of inspection, the owner or user of a boiler inspected by the chief boiler inspector shall pay to the commissioner fees or a combination of fees which must be determined ~~annually~~ by the commissioner. The commissioner ~~may~~ must determine and may annually adjust a fee scale for the internal ~~inspection~~ inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than one hundred dollars may be charged or collected for ~~the~~ any one inspection of a boiler ~~in a year~~ except for special inspections made upon request. Not more than seventy-five dollars may be charged or collected for ~~an~~ any one inspection of a steam traction engine ~~in a year~~ except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed ~~one~~ two hundred eighty-five dollars per day or one hundred fifty dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09. The annual fee for the issuance of a reciprocal commission card for a special inspector is twenty dollars and the annual fee for the issuance of a welder-qualified card is ten dollars.

**SECTION 5. AMENDMENT.** Section 26.1-22.1-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-22.1-13. Disposition of funds.** All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections. ~~The commissioner shall not issue a certificate of inspection until all inspection fees have been paid in accordance with section 26.1-22.1-09.~~

**SECTION 6. AMENDMENT.** Section 26.1-30-20 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-30-20. Procedure for approval, disapproval, and withdrawal of approval by use of policy forms filed with commissioner.** No insurance policy, certificate, contract, agreement, or rate schedule, except as is otherwise provided, may be issued, nor may any application, rider, or endorsement be used in connection therewith until the expiration of sixty days after it has been filed unless the commissioner gives written approval. The commissioner may extend the sixty-day

period for an additional period not to exceed fifteen days if the commissioner gives written notice within the sixty-day period to the insurer which made the filing that the commissioner needs the additional time for the consideration of the filing.

**SECTION 7. AMENDMENT.** Subsection 3 of section 26.1-31.2-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Clean, irrevocable, and unconditional letters of credit; ~~as defined in subsection 1 of section 26.1-31.2-03~~, issued or confirmed by a qualified United States institution, as defined in subsection 1 of section 26.1-31.2-03, no later than December thirty-first in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

**SECTION 8. AMENDMENT.** Subsection 5 of section 26.1-34-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A statement that when an annuity contract becomes a claim by the reason of death of the annuitant, settlement:
  - a. If payable in one sum, must be made upon due proof of death, or not later than two months after receipt of the proof, and must include reasonable interest accrued from the date of death; or
  - b. If made under a settlement option other than subdivision a, must include reasonable interest accrued from date of death until such option is made according to the provisions of the contract.

As used in this subsection, the term "reasonable interest" means the same rate of interest as paid on death proceeds left on deposit with the insurer.

<sup>153</sup> **SECTION 9. AMENDMENT.** Subsection 1 of section 26.1-36-05 of the North Dakota Century Code is amended and reenacted as follows:

1. A provision that the policyholder or contractholder is entitled to a grace period of ~~fifteen days for monthly premiums and thirty-one days for all others~~ for the payment of any premium due except the first, during which the policy or contract continues in force, unless the policyholder or contractholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy or contract. The policy or contract may provide that

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<sup>153</sup> Section 26.1-36-05 was also amended by section 21 of House Bill No. 1050, chapter 246.

the policyholder or contractholder is liable to the insurer for the payment of a pro rata premium for the time the policy or contract was in force during the grace period.

<sup>154</sup> **SECTION 10. AMENDMENT.** Subsection 27 of section 26.1-36.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27. "Small employer" means any person that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed at least three, but no more than twenty-five eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, must be considered one employer.

**SECTION 11. AMENDMENT.** Subsection 1 of section 26.1-36.3-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A nonprofit entity known as the North Dakota small employer health reinsurance program, an instrumentality of the state, is created.

**SECTION 12. AMENDMENT.** Subdivision g of subsection 3 of section 26.1-38.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. Any unallocated annuity contract issued ~~by~~ to an employee benefit plan protected under the federal pension benefit guaranty corporation; and

Approved March 6, 1995

Filed March 6, 1995

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<sup>154</sup> Section 26.1-36.3-01 was also amended by sections 26 and 27 of House Bill No. 1050, chapter 246.

**CHAPTER 277****SENATE BILL NO. 2160**

(Industry, Business and Labor Committee)  
(At the request of the Commissioner of Insurance)

**INSURANCE COMPANY APPOINTMENT FEES**

AN ACT to amend and reenact subsection 24 of section 26.1-01-07 of the North Dakota Century Code, relating to insurance company appointment fees; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 24 of section 26.1-01-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24. For each insurance company appointment and renewal of an appointment of an insurance agent or limited insurance representative, ~~ten~~ fifteen dollars.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 1997, and after that date is ineffective.

Approved March 21, 1995  
Filed March 23, 1995

## CHAPTER 278

### SENATE BILL NO. 2178

(Appropriations Committee)

(At the request of the Office of Management and Budget)

## INSURANCE REGULATORY TRUST FUND TRANSFER

AN ACT to amend and reenact subsection 3 of section 26.1-01-07.1 of the North Dakota Century Code, relating to transfer of the cash balance in the insurance regulatory trust fund to the general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 26.1-01-07.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Any cash balance in the insurance regulatory trust fund after all current biennium expenditures are met must be carried forward in the insurance regulatory trust fund for the next succeeding biennium, except when the balance at the end of the biennium exceeds one million five hundred thousand dollars; any excess will be transferred to the general fund in the state treasury. Except as provided in section 2 of this Act, at the end of each fiscal year, the state treasurer shall transfer, after all fiscal year expenses have been paid, any cash balance remaining in the insurance regulatory trust fund that exceeds one million five hundred thousand dollars to the general fund.

**SECTION 2. EXEMPTION.** The state treasurer may not include revenue generated by the insurance company appointment or renewal fee increase provided for in Senate Bill No. 2160, as approved by the fifty-fourth legislative assembly, and associated expenditures in calculating transfers from the insurance regulatory trust fund to the general fund pursuant to subsection 3 of section 26.1-01-07.1 for the biennium beginning July 1, 1995, and ending June 30, 1997.

Approved March 7, 1995

Filed March 7, 1995

**CHAPTER 279****HOUSE BILL NO. 1173**

(Industry, Business and Labor Committee)  
(At the request of the Commissioner of Insurance)

**RISK-BASED CAPITAL FOR INSURERS**

AN ACT to create and enact chapters 26.1-03.1 and 26.1-10.1 of the North Dakota Century Code, relating to risk-based capital for insurers and disclosure of material transactions; and to amend and reenact section 26.1-03-11.3 of the North Dakota Century Code, relating to confidentiality and sharing of certain information.

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

**SECTION 1. AMENDMENT.** Section 26.1-03-11.3 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-03-11.3. Confidentiality.** ~~All financial analysis ratios and examination synopsis concerning insurance companies that are submitted to the department by the national association of insurance commissioners' insurance regulatory information system are confidential; may not be disclosed by the department; and are exempt from section 44-04-18.~~ The commissioner shall maintain, as confidential, any confidential documents or information received from the national association of insurance commissioners or state or federal regulatory or law enforcement officials of other states or jurisdictions. The information may not be disclosed by the department and is exempt from section 44-04-18. The commissioner may share information that is confidential under the laws of this state with the national association of insurance commissioners and with state or federal regulatory or law enforcement officials from other states or jurisdictions providing that the officials are required, under their law, to maintain its confidentiality.

**SECTION 2.** Chapter 26.1-03.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-03.1-01. Definitions.** As used in this chapter:

1. "Adjusted risk-based capital report" means a risk-based capital report that has been adjusted by the commissioner in accordance with subsection 3 of section 26.1-03.1-02.
2. "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.
3. "Domestic insurer" means any insurance company domiciled in this state, except a county mutual insurance company.
4. "Foreign insurer" means any insurance company that is licensed to do business in this state under chapter 26.1-11 but is not domiciled in this state.



5. "Life or health insurer" means any licensed life or health insurance company or a licensed property and casualty insurer writing only accident and health insurance.
6. "Negative trend" means, with respect to a life or health insurer, negative trend over a period of time, as determined in accordance with the trend test calculation included in the risk-based capital instructions.
7. "Risk-based capital instructions" means the risk-based report, including risk-based capital instructions adopted by the national association of insurance commissioners, as such risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.
8. "Risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital and:
  - a. "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
  - b. "Company action level risk-based capital" means, with respect to any insurer, the product of two and its authorized control level risk-based capital.
  - c. "Mandatory control level risk-based capital" means the product of seventy hundredths and the authorized control level risk-based capital.
  - d. "Regulatory action level risk-based capital" means the product of one and one-half and its authorized control level risk-based capital.
9. "Risk-based capital plan" means a comprehensive financial plan containing the elements specified in subsection 2 of section 26.1-03.1-03. If the commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan must be called the "revised risk-based capital plan".
10. "Risk-based capital report" means the report required in section 26.1-03.1-02.
11. "Total adjusted capital" means the sum of:
  - a. An insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual statements required to be filed under section 26.1-03-07; and
  - b. Such other items, if any, as the risk-based capital instructions may provide.

26.1-03.1-02. Risk-based capital reports.

1. On or prior to each March first, every domestic insurer shall prepare and submit to the commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing any information required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:
  - a. With the national association of insurance commissioners in accordance with the risk-based capital instructions; and
  - b. With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:
    - (1) Fifteen days from the receipt of notice to file its risk-based capital report with that state; or
    - (2) The filing date.
2. A life and health insurer's risk-based capital must be determined in accordance with the formula set forth in the risk-based capital instructions. The formula must take into account, and may adjust for the covariance between:
  - a. The risk with respect to the insurer's assets;
  - b. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
  - c. The interest rate risk with respect to the insurer's business; and
  - d. All other business risks and any other relevant risks as are set forth in the risk-based capital instructions;

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.
3. A property and casualty insurer's risk-based capital must be determined in accordance with the formula set forth in the risk-based capital instructions. The formula must take into account, and may adjust for the covariance between:
  - a. Asset risk;
  - b. Credit risk;
  - c. Underwriting risk; and
  - d. All other business risks and any other relevant risks as are set forth in the risk-based instructions;

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

4. An excess of capital over the amount produced by the risk-based capital requirements contained in this chapter and the formulas, schedules, and instructions referenced in this chapter is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the risk-based capital levels required by this chapter. Additional capital is used and is useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this chapter.
5. If a domestic insurer files a risk-based capital report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk-based capital report to correct the inaccuracy and notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. A risk-based capital report so adjusted is referred to as an adjusted risk-based capital report.

26.1-03.1-03. Company action level event.

1. "Company action level event" means any of the following events:
  - a. The filing of a risk-based capital report by an insurer which indicates that:
    - (1) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
    - (2) If a life or health insurer, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and two and one-half and has a negative trend;
  - b. The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates an event in subdivision a, provided the insurer does not challenge the adjusted risk-based capital report under section 26.1-03.1-07; or
  - c. If, under section 26.1-03.1-07, an insurer challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.
2. In the event of a company action level event, the insurer shall prepare and submit to the commissioner a risk-based capital plan that must:
  - a. Identify the conditions that contribute to the company action level event;
  - b. Contain proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;
  - c. Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of



- a. The state has a risk-based capital provision substantially similar to subsection 1 of section 26.1-03.1-08; and
- b. The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:
  - (1) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or
  - (2) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsections 3 and 4.

26.1-03.1-04. Regulatory action level event.

- 1. "Regulatory action level event" means, with respect to any insurer, any of the following events:
  - a. The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital;
  - b. The notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in subdivision a, provided the insurer does not challenge the adjusted risk-based capital report under section 26.1-03.1-07;
  - c. If, under section 26.1-03.1-07, the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge;
  - d. The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;
  - e. The failure of the insurer to submit a risk-based capital plan to the commissioner within the time period set forth in subsection 3 of section 26.1-03.1-03;
  - f. Notification by the commissioner to the insurer that:
    - (1) The risk-based capital plan or revised risk-based capital plan submitted by the insurer, in the judgment of the commissioner, is unsatisfactory; and
    - (2) The notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under section 26.1-03.1-07;
  - g. If, under section 26.1-03.1-07, the insurer challenges a determination by the commissioner under subdivision f, the



the insurer's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants must be borne by the affected insurer or such other party as directed by the commissioner.

26.1-03.1-05. Authorized control level event.

1. "Authorized control level event" means any of the following events:

- a. The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital;
- b. The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the event in subdivision a, provided the insurer does not challenge the adjusted risk-based capital report under section 26.1-03.1-07;
- c. If, under section 26.1-03.1-07, the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision a, notification by the commissioner to the insurer that, after a hearing, the commissioner has rejected the insurer's challenge;
- d. The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order provided the insurer has not challenged the corrective order under section 26.1-03.1-07; or
- e. If the insurer has challenged a corrective order under section 26.1-03.1-07 and, after a hearing, the commissioner has rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

2. In the event of an authorized control level event with respect to an insurer, the commissioner shall:

- a. Take such actions as are required under section 26.1-03.1-04 regarding an insurer with respect to which a regulatory action level event has occurred; or
- b. Take necessary action to cause the insurer to be placed under regulatory control under chapter 26.1-06.1 if the commissioner deems it to be in the best interests of the policyholders, creditors of the insurer, and the public. If the commissioner takes such actions, the authorized control level event must be deemed sufficient grounds for the commissioner to take action under chapter 26.1-06.1, and the commissioner has the rights, powers, and duties with respect to the insurer in chapter 26.1-06.1. If the commissioner takes action under this subdivision pursuant to an adjusted risk-based capital report, the insurer is entitled to any protection afforded to insurers under chapter 26.1-06.1 pertaining to summary proceedings.

26.1-03.1-06. Mandatory control level event.

1. "Mandatory control level event" means any of the following events:
  - a. The filing of a risk-based capital report that indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital;
  - b. Notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the event in subdivision a, provided the insurer does not challenge the adjusted risk-based capital report under section 26.1-03.1-07; or
  - c. If, under section 26.1-03.1-07, the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision a, notification by the commissioner to the insurer that, after a hearing, the commissioner has rejected the insurer's challenge.
2. In the event of a mandatory control level event:
  - a. With respect to a life insurer, the commissioner shall take actions as are necessary to place the insurer under regulatory control under chapter 26.1-06.1. In that event, the mandatory control level event must be deemed sufficient grounds for the commissioner to take action under chapter 26.1-06.1, and the commissioner has the rights, powers, and duties in chapter 26.1-06.1 with respect to the insurer. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protection of chapter 26.1-06.1 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.
  - b. With respect to a property and casualty insurer, the commissioner may take such actions as are necessary to place the insurer under regulatory control under section 26.1-06.1, or, in the case of an insurer that is not writing business and that is running off its existing business, may allow the insurer to continue its runoff under the supervision of the commissioner. In either event, the mandatory control level event must be deemed sufficient grounds for the commissioner to take action under chapter 26.1-06.1 and the commissioner has the rights, powers, and duties in chapter 26.1-06.1 with respect to the insurer. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protection of chapter 26.1-06.1 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level events may be eliminated within the ninety-day period.

26.1-03.1-07. Hearings. Upon:



1. Notification to an insurer by the commissioner of an adjusted risk-based capital report;
2. Notification to an insurer by the commissioner that:
  - a. The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory; and
  - b. Such notification constitutes a regulatory action level event with respect to the insurer;
3. Notification to any insurer by the commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or
4. Notification to an insurer by the commissioner of a corrective order with respect to the insurer;

the insurer is entitled to a confidential departmental hearing, on a record, at which the insurer may challenge any determination or action by the commissioner. The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under subsection 1, 2, 3, or 4. Upon receipt of the insurer's request for a hearing, the commissioner must set a date for the hearing, which date must be no less than ten nor more than thirty days after the date of the insurer's request.

26.1-03.1-08. Confidentiality - Prohibition on announcements - Prohibition on use in ratemaking.

1. All risk-based capital reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and risk-based capital plans, including the results or report of any examination or analysis of an insurer performed under this chapter and any corrective order issued by the commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore must be kept confidential by the commissioner. This information may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner under this chapter or any other provision of the insurance laws of this state.
2. It is the judgment of the legislative assembly that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television

station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

3. It is the further judgment of the legislative assembly that the risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and may not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write.

26.1-03.1-09. Supplemental provisions - Rules - Exemption.

1. This chapter is supplemental to any other laws of this state, and does not preclude or limit any other powers or duties of the commissioner under these laws, including chapters 26.1-06.1 and 26.1-06.2.
2. The commissioner may adopt rules necessary for the implementation of this chapter.
3. The commissioner may exempt from the application of this chapter any domestic property and casualty insurer that:
  - a. Writes direct business only in this state;
  - b. Writes direct annual premiums less than an amount determined by the commissioner; and
  - c. Assumes no reinsurance in excess of five percent of direct premium written.

26.1-03.1-10. Foreign insurers.

1. Upon the written request of the commissioner, any foreign insurer shall submit to the commissioner a risk-based capital report as of the end of the calendar year just ended, the later of:
  - a. The date a risk-based capital report would be required to be filed by a domestic insurer under this chapter; or

- b. Fifteen days after the request is received by the foreign insurer.

At the written request of the commissioner, any foreign insurer shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of another state.

2. In the event of a company action level event, regulatory action level event, or authorized control level event, with respect to any foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer, or, if no risk-based capital provision is in force in that state, under the provisions of this chapter, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under that state's risk-based capital statute, or, if no risk-based capital provision is in force in the state, the commissioner may require the foreign insurer to file a risk-based capital plan with the commissioner under section 26.1-03.1-03. In such event, the failure of the foreign insurer to file a risk-based capital plan with the commissioner is grounds to order the insurer to cease and desist from writing new insurance business in this state.
3. In the event of a mandatory control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the district court permitted under section 26.1-06.1-04 with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event is adequate grounds for the application.

26.1-03.1-11. Immunity. There is no liability on the part of, and no cause of action may arise against, the commissioner or the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under this chapter.

26.1-03.1-12. Notices. All notices by the commissioner to an insurer that may result in regulatory action hereunder are effective upon dispatch if transmitted by registered mail, or in the case of any other transmission is effective upon the insurer's receipt of the notice.

26.1-03.1-13. Phasein provision.

1. For risk-based capital reports required to be filed by life insurers with respect to 1993, the following requirements apply in lieu of the provisions of sections 26.1-03.1-03, 26.1-03.1-04, 26.1-03.1-05, and 26.1-03.1-06:
- a. In the event of a company action level event with respect to a domestic insurer, the commissioner may take no regulatory action hereunder.
- b. In the event of a regulatory action level event under subdivision a, b, or c of subsection 1 of section 26.1-03.1-04, the commissioner shall take the actions required under section 26.1-03.1-03.

- c. In the event of a regulatory action level event under subdivision d, e, f, g, h, or i of subsection 1 of section 26.1-03.1-04 or an authorized control level event, the commissioner shall take the actions required under section 26.1-03.1-04 with respect to the insurer.
    - d. In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under section 26.1-03.1-05 with respect to the insurer.
  - 2. For risk-based capital reports required to be filed by property and casualty insurers with respect to 1994, the following requirements apply in lieu of the provisions of sections 26.1-03.1-03, 26.1-03.1-04, 26.1-03.1-05, and 26.1-03.1-06:
    - a. In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.
    - b. In the event of a regulatory action level event under subdivision a, b, or c of subsection 1 of section 26.1-03.1-04, the commissioner shall take the actions required under section 26.1-03.1-03.
    - c. In the event of a regulatory action level event under subdivision d, e, f, g, h, or i of subsection 1 of section 26.1-03.1-04 or an authorized control level event, the commissioner shall take the action required under section 26.1-03.1-05 with respect to the insurer.

SECTION 3. Chapter 26.1-10.1 of the North Dakota Century Code is created and enacted as follows:

26.1-10.1-01. Report.

- 1. Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of the insurance code, laws, rules, or other requirements.
- 2. The report required in subsection 1 is due within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.
- 3. One complete copy of the report, including any exhibits or other attachments, must be filed with:
  - a. The insurance department of the insurer's state of domicile; and
  - b. The national association of insurance commissioners.
- 4. All reports obtained by or disclosed to the commissioner under this chapter must be given confidential treatment and are not subject to

subpoena and must not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the commissioner may publish all or any part in the manner the commissioner deems appropriate.

#### 26.1-10.1-02. Acquisitions and dispositions of assets.

1. Materiality. Acquisitions or dispositions of assets need not be reported under section 26.1-10.1-01 if the acquisitions or dispositions are not material. For purposes of this chapter, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period, or disposition, or the aggregate of any series of related dispositions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.
2. Scope.
  - a. Asset acquisitions subject to this chapter include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for this purpose.
  - b. Asset dispositions subject to this chapter include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.
3. Information to be reported.
  - a. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:
    - (1) Date of the transaction;
    - (2) Manner of acquisition or disposition;
    - (3) Description of the assets involved;
    - (4) Nature and amount of the consideration given or received;
    - (5) Purpose of, or reason for, the transaction;
    - (6) Manner by which the amount of consideration was determined;
    - (7) Gain or loss recognized or realized as a result of the transaction; and

(8) Names of the persons from whom the assets were acquired or to whom they were disposed.

- b. Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

26.1-10.1-03. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

1. Materiality and scope.

- a. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements need not be reported under section 26.1-10.1-01 if the nonrenewals, cancellations, or revisions are not material. For purposes of this chapter, a material nonrenewal, cancellation, or revision is one that affects:

(1) As respects property and casualty business, including accident and health business written by a property and casualty insurer:

(a) More than fifty percent of the insurer's total ceded written premium; or

(b) More than fifty percent of the insurer's total ceded indemnity and loss adjustment reserves.

(2) As respects life, annuity, and accident and health business, more than fifty percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.

(3) As respects either property and casualty or life, annuity, and accident and health business, either of the following events constitutes a material revision that must be reported:

(a) An authorized reinsurer representing more than ten percent of a total cession is replaced by one or more unauthorized reinsurers; or

(b) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

- b. However, filing is not required if:

- (1) As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten percent of its total written premium for direct and assumed business; or
- (2) As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession.

2. Information to be reported.

- a. The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:
  - (1) Effective date of the nonrenewal, cancellation, or revision;
  - (2) The description of the transaction with an identification of the initiator of the transaction;
  - (3) Purpose of, or reason for, the transaction; and
  - (4) If applicable, the identity of the replacement reinsurers.
- b. Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year which are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 280****SENATE BILL NO. 2360**

(Senator Lips)

(Representatives Wald, Payne)

**INSURANCE CONSOLIDATION OR REINSURANCE  
HEARINGS**

AN ACT to create a new section to chapter 26.1-07 of the North Dakota Century Code, relating to hearing on petition and duties of the insurance commissioner; to amend and reenact sections 26.1-07-01, 26.1-07-02, and 26.1-07-04 of the North Dakota Century Code, relating to consolidation or reinsurance of domestic insurance companies; and to repeal section 26.1-07-05 of the North Dakota Century Code, relating to hearings on petition and duties of the insurance commissioner.

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

**SECTION 1. AMENDMENT.** Section 26.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-07-01. Domestic companies - Consolidation - Reinsurance.** As used in this chapter, "consolidate" includes consolidation and merger and "reinsurance" ~~refers to reinsurance~~ includes only those obligations ceded or assumed by an assumption agreement. An "assumption agreement" is one that transfers all of the direct insurer's obligations under policies of insurance to another insurer and relieves the transferring insurer of any obligations under the policies. A domestic insurance company organized on the stock, mutual, stipulated premium, or assessment plan may not consolidate with any other company, or reinsure its risks or any part thereof with any other company, or assume or reinsure the whole or any portion of the risks of any other company, except in the manner provided by this chapter. ~~This chapter does not prevent a company, whether organized on the stock or mutual plan, from reinsuring a fractional part of any single risk.~~

**SECTION 2. AMENDMENT.** Section 26.1-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-07-02. Petition for allowance of consolidation or reinsurance.** When any company described in section 26.1-07-01 proposes to consolidate with any other company, or to enter into any contract of reinsurance, it must file its petition with the commissioner setting forth the terms and conditions of the proposed consolidation or reinsurance contract and asking for approval or modification as provided by this chapter. The company shall file as an exhibit to the petition the proposed consolidation or reinsurance contract.

**SECTION 3. AMENDMENT.** Section 26.1-07-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-07-04. Notice of petition for consolidation or reinsurance.** When a petition is filed, the commissioner, within thirty days after filing of the petition, shall issue an order requiring notice by mail to each policyholder of the petitioning domestic company if any of its policyholders are being reinsured or it is proposing to consolidate with another company, of the pendency of the petition and of the time



when and place where a hearing on the petition will be held. The hearing must be scheduled not more than ninety days from the date of the order. The commissioner shall publish the order of notice and the petition in five newspapers, one of which must be a daily newspaper published at the state capital, at least two weeks before the hearing upon the petition. By mutual agreement between the petitioning company and the commissioner, the time frame set forth in this section may be modified, changed, or extended.

SECTION 4. A new section to chapter 26.1-07 of the North Dakota Century Code is created and enacted as follows:

Hearing on petition - General duties of commissioner. The commissioner shall hold a hearing on the petition and determine whether the consolidation or reinsurance will be allowed. The hearing must be conducted under chapter 28-32. Within sixty days of the close of the hearing, the commissioner shall enter findings of fact, conclusions of law, and an order either approving or disapproving any petition. The commissioner in making the determination shall consider the following:

1. Whether the proposed consolidation or reinsurance contract is inequitable to the policyholders of any domestic insurance company involved;
2. Whether the proposed consolidation or reinsurance contract would materially reduce the financial security of policyholders of the domestic insurer in this state or elsewhere; and
3. Whether the competence, experience, and integrity of the persons of a foreign insurance company who would control the operation of the consolidated insurance company or the reinsuring company are such that it would not be in the interest of the policyholders of the company to permit the consolidation or reinsurance contract.

The findings of fact, conclusions of law, and order entered by the commissioner are subject to appeal under chapter 28-32.

SECTION 5. REPEAL. Section 26.1-07-05 of the North Dakota Century Code is repealed.

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 281

## HOUSE BILL NO. 1205

(Representatives Wald, Froseth, Carlson, Skarphol)  
(Senators Mutch, Krebsbach)

## INSURANCE BROKER COVERAGE AND LICENSING

AN ACT to create and enact two new sections to chapter 26.1-26 of the North Dakota Century Code, relating to license requirements for insurance brokers and payment of insurance commissions by insurance brokers; and to amend and reenact section 26.1-26-18 of the North Dakota Century Code, relating to bond requirements for insurance brokers and surplus lines insurance brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-26 of the North Dakota Century Code is created and enacted as follows:

Errors and omissions insurance - License requirement for insurance brokers.  
Each insurance broker or surplus lines insurance broker shall file a certificate of insurance with the commissioner, and shall keep in force for as long as the license remains in effect, an errors and omissions insurance policy in an amount not less than five hundred thousand dollars.

SECTION 2. A new section to chapter 26.1-26 of the North Dakota Century Code is created and enacted as follows:

Payment of commissions by brokers - Limitations. No surplus lines insurance broker or insurance broker may pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker within this state unless the person receiving the payment held at the time the services were performed a valid license as a surplus lines insurance broker or insurance broker as required by the laws of this state. A person licensed as an insurance agent or a limited insurance representative under this chapter at the time the services were performed may not accept any commission, brokerage, or other valuable consideration paid in violation of this section.

SECTION 3. AMENDMENT. Section 26.1-26-18 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26-18. License requirement - Brokers - Bond - ~~Waiver for nonresident insurance broker.~~** ~~Prior to~~ Before issuance of a license as an insurance broker, the applicant shall file with the commissioner, and ~~thereafter~~, for as long as the license remains in effect; shall keep in force, a bond in the penal sum of ~~not less than two~~ five thousand dollars with authorized corporate surety approved by the commissioner. ~~Prior to~~ Before issuance of a license as a surplus lines insurance broker, the applicant shall file with the commissioner, and ~~thereafter~~, for as long as the license remains in effect; shall keep in force, a bond in the penal sum of not less than ~~an amount equal to the taxes paid to the commissioner the previous year as required by section 26.1-44-06; with a minimum bond of five hundred dollars and a maximum bond of twenty~~ five thousand dollars required. ~~The commissioner shall~~

set the bond for a surplus lines insurance broker not previously licensed or whose license has lapsed, but the bond may not be less than five hundred dollars nor greater than twenty thousand dollars with authorized corporate surety approved by the commissioner. The aggregate liability of the surety for claims on any bond may not exceed the penal sum of the bond. No bond may be terminated unless at least thirty days' prior written notice is given by the surety to the licensee and the commissioner. Upon termination of the license for which the bond was in effect, the commissioner shall notify the surety within ten working days. Any licensee who is the holder of a license as an insurance broker and a license as a surplus lines insurance broker may satisfy the bonding requirements by a single bond in the penal sum of not less than ~~twenty~~ ten thousand dollars.

Notwithstanding other provisions of this chapter, no new bond may be required for a nonresident insurance broker if the commissioner is satisfied that the existing bond covers the broker's insurance business in this state.

Approved March 29, 1995  
Filed March 29, 1995

**CHAPTER 282****HOUSE BILL NO. 1194**  
(Representatives Payne, Wald, Byerly)  
(Senators Lips, Tallackson, Nething)**STATUTE OF LIMITATIONS FOR INSURANCE AGENTS**

AN ACT to create and enact a new section to chapter 26.1-26 of the North Dakota Century Code, relating to a statute of limitations for insurance agents and brokers.

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

**SECTION 1.** A new section to chapter 26.1-26 of the North Dakota Century Code is created and enacted as follows:

**Statute of limitations.** A civil action for the recovery of damages resulting from negligence or breach of contract brought against any person licensed under this chapter by any person claiming to have been injured as a result of the providing of insurance services or the failure to provide insurance services by a licensee may not be commenced in this state after July 31, 1995, unless the action is commenced on or before the earlier of:

1. Two years from the date the alleged act, omission, or neglect is discovered or should have been discovered by the exercise of reasonable diligence; or
2. Six years after performance of the service for which the claim for relief arises, unless discovery was prevented by the fraudulent conduct of the licensee.

Approved April 4, 1995  
Filed April 4, 1995

## CHAPTER 283

## HOUSE BILL NO. 1184

(Representatives Grosz, Galvin, Delzer)  
(Senators Christmann, Freborg)

## BOILER INSPECTION AND CERTIFICATES

AN ACT to amend and reenact sections 26.1-22.1-07 and 26.1-22.1-10 of the North Dakota Century Code, relating to inspection of boilers and certificates of inspection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22.1-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-22.1-07. Inspection of boilers.**

1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the commissioner.
2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined that the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every ~~twenty-four~~ thirty-six months internally ~~and externally~~ while not under pressure, and at least once every ~~eighteen~~ twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for ~~twenty-four months~~ thirty-six month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefor, and the results of the chemical and physical laboratory analysis of samples of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours of operation as or from continuous on-line analysers, that will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts.

3. In the event an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

**SECTION 2. AMENDMENT.** Section 26.1-22.1-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-22.1-10. Certificate of inspection - Certificate to be posted.** The commissioner shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the ~~boilers are~~ boiler is in a safe condition to be operated. The commissioner shall charge a fee of fifteen dollars for each certificate of inspection issued as the result of inspections authorized under section 26.1-22.1-08. The fees are the liability of the insurance company or self-insured company and must be paid in accordance with rules adopted by the commissioner. No certificate may be issued for any boiler not in a safe condition to be operated. No certificate is valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 26.1-22.1-07, and no more than twelve months for other power boilers, twenty-four months for steam traction engines, and thirty-six months for low pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

Approved March 24, 1995  
Filed March 27, 1995

**CHAPTER 284****HOUSE BILL NO. 1393**  
(Representative Payne)**INSURABLE INTEREST OF CORPORATION OR TRUSTEE**

AN ACT to amend and reenact subsection 3 of section 26.1-29-09.1 of the North Dakota Century Code, relating to the definition of insurable interest for purposes of personal insurance.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 26.1-29-09.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Insurable interest", with reference to personal insurance, includes only the following interests:
  - a. In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.
  - b. In the case of persons other than those described in subdivision a, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest that would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.
  - c. In the case of individual parties to a contract or option for the purchase or sale of an interest in a business partnership or firm, of a membership interest in a limited liability company, or of shares of stock of a closed corporation or of an interest in the shares, an interest in the life of each individual party to the contract for the purpose of the contract only, in addition to an insurable interest that may otherwise exist as to the life of the individual.
  - d. In the case of religious, educational, eleemosynary, charitable, or benevolent organizations, a lawful interest in the life of the individual insured if that individual has executed a written consent to the insurance contract.
  - e. In the case of a corporation or the trustee of a trust providing life, health, disability, retirement, or similar benefits to employees of one or more corporations, and acting in a fiduciary capacity with respect to the employees, retired employees, or their dependents or beneficiaries, a corporation or the trustee of a trust has an insurable interest in the lives of employees for whom the benefits are to be provided and the corporation or trustee of a trust may purchase, accept, or otherwise acquire an interest in personal insurance as a beneficiary or owner. The consent of the insured individual is

required if the personal insurance purchased names the corporation or the trustee of a trust as a beneficiary. The consent requirement is satisfied if the insured individual is provided written notice of the coverage and does not reject the coverage within thirty days of receipt of the notice.

Approved March 21, 1995

Filed March 21, 1995



**CHAPTER 285****SENATE BILL NO. 2129**

(Senator Lips)

(Representatives Wald, Walker)

**DOMESTIC CEDING INSURER CREDIT**

AN ACT to amend and reenact subdivision a of subsection 4 of section 26.1-31.2-01 of the North Dakota Century Code, relating to credit allowed a domestic ceding insurer; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 4 of section 26.1-31.2-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. a. Credit must be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03, for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust must consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars. In the case of a group of, including incorporated and individual unincorporated underwriters, the trust must consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars must be held jointly for the benefit of United States ceding insurers of any member of the group; the incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

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

Approved March 6, 1995

Filed March 6, 1995

**CHAPTER 286****HOUSE BILL NO. 1155**

(Industry, Business and Labor Committee)  
(At the request of the Commissioner of Insurance)

**VIATICAL SETTLEMENTS**

AN ACT to create and enact chapter 26.1-33.1 of the North Dakota Century Code, relating to viatical settlements; and to provide a penalty.

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

**SECTION 1.** Chapter 26.1-33.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-33.1-01. Definitions.**

1. "Person" means any natural or artificial entity, including individuals, partnerships, associations, trusts, or corporations.
2. "Viatical settlement broker" means an individual, partnership, corporation, or other entity who or which for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement provider. Viatical settlement broker does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.
3. "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition. The agreement must establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.
4. "Viatical settlement provider" means an individual, partnership, corporation, or other entity that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:

- a. Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
  - b. The issuer of a life insurance policy providing accelerated benefits; or
  - c. Any natural person who enters into no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.
5. "Viator" means the owner of a life insurance policy insuring the life of a person with a catastrophic or life-threatening illness or condition or the certificate holder who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

**26.1-33.1-02. License requirements - Penalty.**

1. No individual, partnership, corporation, or other entity may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner.
2. Application for a viatical settlement provider license must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a fee of two hundred fifty dollars.
3. Licenses may be renewed from year to year on the anniversary date upon payment of an annual renewal fee of one hundred fifty dollars. Failure to pay the fee within the term prescribed results in the automatic revocation of the license.
4. Upon the filing of an application and payment of the license fee, the commissioner shall issue a license if the commissioner finds that the applicant:
  - a. Has provided a detailed plan of operation;
  - b. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
  - c. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and
  - d. If a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.
5. The commissioner may not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the

commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner of insurance.

6. A person may not act as or hold oneself out to be a viatical settlement provider unless licensed under this chapter. Any person willfully violating this section is guilty of a class C felony.

**26.1-33.1-03. License revocation.**

1. The commissioner may suspend, revoke, or refuse to renew the license of any viatical settlement provider if the commissioner finds that:
  - a. There was any misrepresentation in the application for the license;
  - b. The holder of the license has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;
  - c. The licensee demonstrates a pattern of unreasonable payments to policyowners;
  - d. The licensee has been convicted of a felony or any misdemeanor of which criminal fraud is an element; or
  - e. The licensee has violated any of the provisions of this chapter.
2. Before the commissioner may deny a license application or suspend, revoke, or refuse to renew the license of a viatical settlement provider, the commissioner shall conduct a hearing in accordance with chapter 28-32.

**26.1-33.1-04. Approval of viatical settlement contracts.** A viatical settlement provider may not use any viatical settlement contract in this state unless it has been filed with and approved by the commissioner. Any viatical settlement contract form filed with the commissioner must be deemed approved if it has not been disapproved within sixty days of filing. The commissioner shall disapprove a viatical settlement contract form if the contract or provisions contained in the contract are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyowner.

**26.1-33.1-05. Reporting requirements.** Each licensee shall file with the commissioner on or before March first of each year an annual statement containing the following information regarding business transacted in this state for the previous calendar year:

1. For each policy viaticated:
  - a. The date the viatical settlement was entered into.
  - b. The life expectancy of viator at time of contract.
  - c. The face amount of policy.

- d. The amount paid by the viatical settlement provider to viaticate the policy and the percentage that amount represents of the face amount.
- e. If the viator has died:
  - (1) The date of death.
  - (2) The total insurance premiums paid by viatical settlement provider to maintain the policy in force.
2. A breakdown, by disease category, of applications received, accepted, and rejected.
3. A breakdown of policies viaticated by issuer and policy type.
4. The number of secondary market versus primary transactions.
5. The total number of policies viaticated.
6. The amount of outside borrowings.

**26.1-33.1-06. Examination.**

1. When the commissioner deems it reasonably necessary to protect the interests of the public, the commissioner may examine the business and affairs of any licensee or applicant for a license. The commissioner may order any licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination must be paid by the licensee or applicant.
2. Names and individual identification data for all viators are not subject to section 44-04-18 and are private and confidential information and may not be disclosed by the commissioner, unless required by law.
3. Records of all transactions of viatical settlement contracts must be maintained by the licensee and must be made available to the commissioner for inspection during reasonable business hours.

**26.1-33.1-07. Disclosure.** A viatical settlement provider shall disclose the following information to the viator no later than the date the viatical settlement contract is signed by all parties:

1. Possible alternatives to viatical settlement contracts for persons with catastrophic or life-threatening illnesses, including accelerated benefits offered by the issuer of the life insurance policy.
2. The fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax advisor.
3. The fact that the viatical settlement may be subject to the claims of creditors.

4. The fact that receipt of a viatical settlement may adversely affect the recipients' eligibility for medicaid or other government benefits or entitlements and that advice should be obtained from the appropriate agencies.
5. The policyowner's right to rescind a viatical settlement contract within thirty days of the date it is executed by all parties or fifteen days of the receipt of the viatical settlement proceeds by the viator, whichever is less, as provided in section 26.1-33.1-08.
6. The date by which the funds will be available to the viator and the source of the funds.

**26.1-33.1-08. General rules.**

1. A viatical settlement provider entering into a viatical settlement contract with any person with a catastrophic or life-threatening illness or condition shall first obtain:
  - a. A written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and
  - b. A witnessed document in which the person consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness, represents the person has a full and complete understanding of the viatical settlement contract, has a full and complete understanding of the benefits of the life insurance policy, releases that person's medical records, and acknowledges that the person has entered into the viatical settlement contract freely and voluntarily.
2. All medical information solicited or obtained by any licensee is subject to the applicable provision of state law relating to confidentiality of medical information.
3. All viatical settlement contracts entered into in this state must contain an unconditional refund provision of at least thirty days from the date of the contract or fifteen days of the receipt of the viatical settlement proceeds, whichever is less.
4. Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer.
5. Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.

**26.1-33.1-09. Unfair trade practices.** A violation of this chapter is an unfair trade practice under chapter 26.1-04 subject to the penalties contained in that chapter.

**26.1-33.1-10. Applicability of chapter.** A viatical settlement provider transacting business in this state may not continue to do so after August 1, 1995, unless the provider complies with this chapter.

Approved April 11, 1995

Filed April 12, 1995

## CHAPTER 287

## SENATE BILL NO. 2230

(Senators DeMers, Thane)

(Representatives Christenson, Price)

HEALTH INSURANCE COVERAGE FOR NEWBORNS  
AND ADOPTED CHILDREN

AN ACT to amend and reenact section 26.1-36-07 of the North Dakota Century Code, relating to health insurance coverage for newborn and adopted children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-07. Health insurance coverage for newborn and adopted children - Scope of coverage - Notification of birth or adoption.

1. All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation which ~~provides~~ provide coverage for a family member of the insured or subscriber must, as to the family members' coverage, also provide that the health insurance benefits applicable for children are payable with respect to a newly born child of the insured or subscriber from the moment of birth and are also payable from the date of physical placement by a licensed child placement agency or by the birth parent pursuant to chapter 14-15.1 with respect to an adopted child.
2. The coverage for newly born children and for children placed for adoption by a licensed child placement agency or by the birth parent pursuant to chapter 14-15.1 consists of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.
3. If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child or child placed for adoption by a licensed child placement agency or by the birth parent pursuant to chapter 14-15.1 and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one days after the date of birth or date of physical placement by a licensed child placement agency or by the birth parent pursuant to chapter 14-15.1 of the child in order to have the coverage continue beyond the thirty-one-day period.

Approved March 24, 1995

Filed March 27, 1995



**CHAPTER 288****SENATE BILL NO. 2480**

(Senators Grindberg, DeMers, Thane)  
(Representatives Christopherson, Kerzman)

**SUBSTANCE ABUSE INSURANCE COPAYMENTS**

AN ACT to create and enact a new subdivision to subsection 2 of section 26.1-36-08 and a new paragraph to subdivision e of subsection 2 of section 26.1-36-09 of the North Dakota Century Code, relating to copayments for treatment of substance abuse outside a preferred provider network.

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

<sup>155</sup> **SECTION 1.** A new subdivision to subsection 2 of section 26.1-36-08 of the North Dakota Century Code is created and enacted as follows:

If the services are provided by a provider outside a preferred provider network without a referral from within the network, the insurance company, nonprofit health service corporation, or health maintenance organization may establish a copayment greater than twenty percent for only those visits after the first five visits in any calendar year.

<sup>156</sup> **SECTION 2.** A new paragraph to subdivision e of subsection 2 of section 26.1-36-09 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

If the services are provided by a provider outside a preferred provider network without a referral from within the network, the insurance company, nonprofit health service corporation, or health maintenance organization may establish a copayment greater than twenty percent for only those hours after the first five hours in any calendar year.

Approved April 12, 1995

Filed April 13, 1995

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<sup>155</sup> Section 26.1-36-08 was also amended by section 2 of House Bill No. 1058, chapter 243.

<sup>156</sup> Section 26.1-36-09 was also amended by section 1 of Senate Bill No. 2292, chapter 289; section 2 of House Bill No. 1058, chapter 243; and section 5 of Senate Bill No. 2080, chapter 329.

**CHAPTER 289****SENATE BILL NO. 2292**

(Senators Mathern, Goetz, Nalewaja)  
(Representatives Olson, Gullekson, Sandvig)

**MENTAL DISORDER INSURANCE COVERAGE**

AN ACT to amend and reenact subsection 2 of section 26.1-36-09 of the North Dakota Century Code, relating to group health policy and health service contract mental disorder coverage.

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

<sup>157</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-36-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. The benefits must be provided for inpatient treatment and treatment by partial hospitalization and outpatient treatment.
- b. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of sixty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto offering treatment for the prevention or cure of mental disorder or other related illness.
- c. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto or by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of mental disorder or other related illness. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.
- d. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization; provided, however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.

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<sup>157</sup> Section 26.1-36-09 was also amended by section 2 of House Bill No. 1058, chapter 243; section 2 of Senate Bill No. 2480, chapter 288; and section 5 of Senate Bill No. 2080, chapter 329.

- e. (1) In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of thirty hours for services covered under this section in any calendar year if the treatment services are provided within the scope of licensure by a nurse who holds advanced licensure with a scope of practice within mental health or if the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or a licensed certified social worker who:
- (a) Possesses a master's or doctorate degree in social work from an institution accredited by the council of social work education;
  - (b) Has at least one year of direct clinical social work practice during graduate school or one year of postgraduate supervised clinical social work practice in a structured teaching environment;
  - (c) Has completed at least seven thousand five hundred hours of post social work graduate degree the equivalent of four years of full-time supervised clinical social work experience obtained within five the last seven years with at least three thousand hours direct clinical social work practice within the last ten years;
  - (d) Has at least three thousand hours post social work graduate degree supervised practice experience obtained within two years; one thousand five hundred hours of which must have been under the supervision of a qualified clinical social worker passed the clinical examination or its equivalent offered by the North Dakota board of social work examiners; and
  - (e) If not licensed in this state, is licensed, certified, or registered at the highest level of social work practice in another state.
- (2) A person who is a licensed certified social worker on August 1, 1995, is exempt from subparagraphs c and d. Supervision under subparagraph c may be provided by a qualified clinical social worker, a licensed psychologist, or a licensed psychiatrist, but the preferred supervisor is the qualified clinical social worker.
- (3) Upon the request of an insurance company, a nonprofit health service corporation, or a health maintenance organization the North Dakota board of social work examiners shall provide to the requesting entity information to certify that a licensed certified social worker meets the qualifications required under this section.
- (4) The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a

deductible or a copayment for the first five hours in any calendar year, and may not establish a copayment greater than twenty percent for the remaining hours.

- f. "Partial hospitalization" means continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period and includes the medically necessary treatment services provided by licensed professionals under the supervision of a licensed physician.

Approved March 13, 1995

Filed March 13, 1995

## CHAPTER 290

### SENATE BILL NO. 2462

(Senators C. Nelson, DeMers, Robinson)  
(Representatives Clayburgh, Monson, Svedjan)

## INSURANCE COVERAGE FOR CERTAIN DISORDERS

AN ACT to amend and reenact sections 26.1-36-09.3 and 54-52.1-04.6 of the North Dakota Century Code, relating to insurance coverage for treatment of certain disorders.

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

**SECTION 1. AMENDMENT.** Section 26.1-36-09.3 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-09.3. Coverage for treatment of certain disorders.** Except for policies ~~which~~ that only provide coverage for specified diseases, no policy or certificate of health, medical, hospitalization, or accident and sickness insurance regulated under this chapter, or a subscriber contract provided by a nonprofit health service corporation, preferred provider organization, or health maintenance organization, may be issued, renewed, continued, delivered, issued for delivery, or executed in this state after January 1, 1990, unless the policy, certificate, plan, or contract specifically provides coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorder. Coverage must be the same as that for treatment to any other joint in the body, and applies if the treatment is administered or prescribed by a physician or a dentist. Benefits for the coverage may be limited to a lifetime maximum of ~~eight ten~~ eight thousand dollars per person for surgery, and two thousand five hundred dollars for nonsurgical treatment.

**SECTION 2. AMENDMENT.** Section 54-52.1-04.6 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.6. Coverage for treatment of certain disorders.** The board shall provide coverage under either a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorder. Coverage must be the same as that for treatment to any other joint in the body, and applies if the treatment is administered or prescribed by a physician or a dentist. Benefits for the coverage may be limited to a lifetime maximum of ~~eight ten~~ eight thousand dollars per person for surgery, and two thousand five hundred dollars for nonsurgical treatment.

Approved March 17, 1995  
Filed March 20, 1995

**CHAPTER 291****HOUSE BILL NO. 1327**  
(Representatives Wald, Payne, Freier)**HEALTH INSURANCE POLICY LOSS RATIOS**

AN ACT to amend and reenact section 26.1-36-37.2 of the North Dakota Century Code, relating to loss ratios on health insurance policies.

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

**SECTION 1. AMENDMENT.** Section 26.1-36-37.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-37.2. Loss ratios - Rules.** For all policies providing hospital, surgical, medical, or major medical benefit, an insurance company, a nonprofit health service corporation, a fraternal benefit society, and any other entity providing a plan of health insurance or health benefit subject to state insurance regulation shall return benefits to group policyholders in the aggregate of not less than seventy-five percent of premium received and to individual policyholders in the aggregate of not less than sixty-five percent of premium received. The commissioner shall adopt rules to establish these minimum standards on the basis of incurred claims experienced and earned premiums for the entire period for which rates are computed to provide coverage in accordance with accepted actuarial principles and practices. This section does not apply to any contract or plan of insurance that provides exclusively for accident, disability income insurance, specified disease, hospital confinement indemnity, or other limited benefit health insurance.

Approved March 21, 1995  
Filed March 21, 1995

**CHAPTER 292****HOUSE BILL NO. 1243****(Representative Kretschmar)****AIRCRAFT AFTERMARKET RISK CONTRACTS**

AN ACT relating to aftermarket risk contracts and insurance requirements for purchasers of aircraft and aircraft components manufactured in this state.

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

**SECTION 1. Definitions. As used in this Act:**

1. "Aftermarket risk insurance" means aircraft and aircraft component product and completed operations liability insurance that conforms with sections 2 and 3 of this Act.
2. "Aircraft" means general aviation light craft that is powered and intended to fly above the ground; is designed to carry one person or more, but with a maximum seating capacity of fewer than twenty passengers; and weighs less than twelve thousand five hundred pounds [5669.9 kilograms].
3. "Aircraft component" means a manufactured part or assembly intended for use in the construction, replacement, or repair of an aircraft. The term includes any complete aircraft subsystem, including the aircraft engine, that carries its own manufacturer's warranty or services provided separately from the warranty of the manufacturer of the aircraft.
4. "Aviation manufacturer" means a manufacturer of aircraft or aircraft components who has its place of manufacture and place of production of aircraft or aircraft components located within this state. The term includes a manufacturer located in this state who imports raw materials, components, and aircraft subassemblies from outside the state for manufacturing purposes. The term also includes a person who modifies, maintains, alters, repairs, or installs aircraft components in aircraft in accordance with federal aviation administration regulations and holds a repair station certificate issued by the federal aviation administration.

**SECTION 2. North Dakota aftermarket risk contract.** The sale of aircraft and aircraft components sold by an aviation manufacturer and the performance of any modification, maintenance, alteration, repair, or installation of components in aircraft in this state are governed by an aftermarket risk contract. The contract between the seller or aviation manager and the purchaser must be executed at the time of purchase and reconsidered at each subsequent resale. The first and subsequent seller or aviation manufacturer shall agree to be bound by North Dakota law and the aftermarket risk contract or to provide a fully paid aftermarket product liability insurance policy that covers exposure to tort liability within the United States. The option of providing the insurance policy applies only to aircraft or aircraft components that sell for more than two thousand dollars.

**SECTION 3. Aftermarket risk insurance requirements - Encumbrances.**

1. An aftermarket risk insurance policy purchased pursuant to section 2 of this Act must hold harmless all aviation manufacturers that manufactured, modified, maintained, repaired, or altered the aircraft or aircraft component assembled or first sold in this state.
2. The aviation manufacturer or seller of the aircraft or aircraft component may offer in the sales contract aftermarket risk insurance based on continued choice of North Dakota law. The aftermarket risk insurance option must be attached to the original sales contract as a lien on the aircraft holding the first owner and each subsequent owner financially responsible for the cost of purchasing and maintaining aftermarket risk insurance and binding the owner to governance by North Dakota law. An aftermarket insurance obligation must be recorded as a lien on the aircraft at the federal aviation administration aircraft registry.

#### **SECTION 4. Stabilization of aftermarket risk insurance market.**

1. An aviation manufacturer and a purchaser of an aircraft or aircraft component which intend to be bound by North Dakota law must be covered by insurance that meets the requirements of insurance laws of this state. The sales contract must include a dispute resolution procedure for aftermarket risk contracts and insurance contracts.
2. An aftermarket risk insurance provider domiciled in this state may limit coverage to include any caps and limitations permitted by law at the time of the first sale of the product.
3. Upon resale of an aircraft or aircraft component, the purchaser agrees to purchase insurance and the insurance carrier shall provide evidence of coverage. A default on the insurance may reinstate, by contract, the lien back to the aviation manufacturer. An aftermarket risk contract may include a requirement for removal of the aircraft or aircraft component from service, consent to be governed by North Dakota law, and purchase of additional passenger and public risk insurance coverage.
4. An aviation manufacturer or value-added reseller shall provide confidential access to data necessary for actuarial analysis by aftermarket insurance carriers to assist in maintaining a competitive insurance market with a choice of alternative carriers.

**SECTION 5. Financial responsibility.** An owner of an aircraft or aircraft component manufactured in this state shall provide proof of financial responsibility in the amount of one hundred thousand dollars, per occurrence, for property damage and personal injury or death on the ground resulting from the use of the aircraft or aircraft component.

Approved April 4, 1995  
Filed April 4, 1995



**CHAPTER 293****SENATE BILL NO. 2499**

(Senator Lips)

**HEALTH PROVIDER COOPERATIVES**

AN ACT to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to health provider cooperatives; and to provide a penalty.

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

**SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter:

1. "Commissioner" means the commissioner of insurance.
2. "Health care provider" means any person or institution licensed to provide health care services in this state.
3. "Health provider cooperative" means a corporation organized under this chapter and operated on a cooperative plan to provide health care services to purchasers of those services.
4. "Member" means a licensed health care provider or an organization owned, controlled, or affiliated with a health care provider, including without limitation, a professional corporation, partnership, or other similar organization.

**Organization - Licensure.** A health provider cooperative shall organize under chapter 10-15 unless otherwise provided in this chapter. After incorporation the health provider cooperative is subject to chapter 10-15 unless otherwise provided in this chapter. If a provision of this chapter conflicts with chapter 10-15, the provision of this chapter applies. A health provider cooperative organized under this chapter is not an insurance company under chapter 26.1-12, a health maintenance organization under chapter 26.1-18.1, or a nonprofit health service corporation under chapter 26.1-17. A health provider cooperative does not violate limitations on the corporate practice of medicine.

**Powers.** In addition to the powers granted a cooperative under chapter 10-15, a health provider cooperative has the powers granted a nonprofit corporation under chapter 10-24. The power granted under chapter 10-15 controls over any inconsistent power granted by chapter 10-24.

**Provider contracts.** A health provider cooperative and its members may execute service contracts permitting the provider members to provide some or all of their health care services through the health provider cooperative to the enrollees, members, subscribers, or insureds of a nonprofit health service plan, health maintenance organization, accident and health insurance company, or the state medical assistance program. Each purchaser may execute contracts for the purchase of health services from a health provider cooperative in accordance with this section.

A contract between a health provider cooperative and a purchaser must provide for payment by the purchaser on a substantially capitated or similar risk-sharing basis.

1. Every contract between a health provider cooperative and a purchaser must be in writing and must provide that if the purchaser fails to pay for health care services as set forth in the contract, the enrollee is not liable to the provider for any sums owed by the purchaser.
2. A member provider, agent, trustee, or assignee thereof, may not maintain any action at law against an enrollee to collect sums owed by the purchaser.

**Contract filing - Approval.** The health provider cooperative shall file each contract between the cooperative and a purchaser with the commissioner. The commissioner shall disapprove any contract:

1. In which the consideration paid for health services is unreasonably high in relationship to the services provided.
2. That fails to include evidence of the specific procedures used to inform prospective enrollees of any limitations imposed on the enrollee's right to receive care from a health provider of the enrollee's choice.
3. Under which a health provider cooperative assumes a corridor of risk greater than fifteen percent in its first year of operation, or greater than thirty percent in any year thereafter.

Any actuarial costs incurred by the department in review of that filing must be borne by the cooperative. The commissioner may adopt rules implementing this section.

**Election of directors - Vote by mail.** Directors of health provider cooperatives are elected under procedures set forth in chapter 10-15. A member may vote by mail for a director unless mail voting is prohibited for election of directors by the articles or bylaws of the cooperative. The board of directors shall prescribe the form of the ballot. The members shall mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name. If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting, the ballot must be accepted and counted as the vote of the absent member.

**State and federal governmental participation.** The state or federal government, or any entity or political subdivision of the state or federal government, may be a member of a health provider cooperative. Any state or federal governmental hospital may be a member of a health provider cooperative. With respect to federal governmental participation:

1. A health provider cooperative may limit its enrollment to those persons entitled to care under the federal program responsible for the health provider cooperative.
2. A health provider cooperative may request that the commissioner waive the eligibility requirements for participation that are contrary to federal law or regulations.

3. The commissioner shall consult with federal officials to develop procedures to allow a health provider cooperative to use the federal government as a guaranteeing organization.
4. In developing and implementing initiatives to expand access to health care, the commissioner must recognize the unique problems of veterans and consider methods to reach underserved portions of the veteran population.

**Prohibited practices - Penalty.**

1. It is unlawful for any person, company, or corporation or any agent, officer, or employee thereof, to coerce or require any person to agree, either in writing or orally, not to join or become or remain a member of any health provider cooperative as a condition of securing or retaining a contract for health care services with the person, firm, or corporation.
2. It is unlawful for any person, company, or corporation, or any combination of persons, companies, or corporations, or any agents, officers, or employees thereof, to engage in acts of coercion, intimidation, or boycott of, or any refusal to deal with, any health care providing entity arising from that entity's actual or potential participation in a health provider cooperative.
3. It is unlawful for any health provider cooperative to engage in any acts of coercion, intimidation, or boycott of, or any concerted refusal to deal with any health plan company seeking to contract with the cooperative on a competitive, reasonable, and nonexclusive basis.
4. It is unlawful for any health provider cooperative to refuse membership to any licensed health care provider or organization that applies for membership and that otherwise agrees to the membership requirements of the health provider cooperative.
5. Any person violating subsections 1 through 4 is deemed to have committed a violation of chapter 51-08.1 and is subject to the provisions, procedures, and penalties of that chapter.

Approved April 6, 1995

Filed April 6, 1995

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 294

### HOUSE BILL NO. 1298

(Representative Kretschmar)

### COURT OF APPEALS EXTENDED

AN ACT to amend and reenact section 15 of chapter 374 of the 1987 Session Laws, as amended by section 1 of chapter 379 of the 1989 Session Laws and section 6 of chapter 24 of the 1993 Session Laws, relating to extending the expiration date for legislation that created a temporary court of appeals.

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

**SECTION 1. AMENDMENT.** Section 15 of chapter 374 of the 1987 Session Laws, as amended by section 1 of chapter 379 of the 1989 Session Laws and section 6 of chapter 24 of the 1993 Session Laws, is amended and reenacted as follows:

**SECTION 15. EXPIRATION DATE.** This Act is effective through January 1, ~~1996~~ 2000, and after that date is ineffective.

Approved April 7, 1995  
Filed April 7, 1995

## **CHAPTER 295**

### **SENATE BILL NO. 2119**

(Judiciary Committee)

(At the request of the Supreme Court)

## **JUDGES HOLDING CONSECUTIVE JURY TERMS**

AN ACT to repeal section 27-05-18 of the North Dakota Century Code, relating to judges holding consecutive jury terms.

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

**SECTION 1. REPEAL.** Section 27-05-18 of the North Dakota Century Code is repealed.

Approved March 1, 1995

Filed March 1, 1995

## CHAPTER 296

### HOUSE BILL NO. 1451 (Representatives Mahoney, Maragos) (Senators Lips, Traynor)

## SMALL CLAIMS COURT ACTIONS

AN ACT to amend and reenact sections 27-08.1-01 and 27-08.1-02 of the North Dakota Century Code, relating to actions in small claims court.

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

<sup>158</sup> **SECTION 1. AMENDMENT.** Section 27-08.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### 27-08.1-01. Small claims court - Jurisdictional limits - Venue.

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction ~~shall~~ must be known and referred to as the "small claims court". The jurisdiction of such court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed three thousand dollars.
2. The proceedings in this court ~~shall~~ must be commenced:
  - a. If the defendant is a corporation, limited liability company, or a partnership, in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred.
  - b. If the claim is for collection of a check written without sufficient funds or without an account, in the county where the check was passed, or in the county of the defendant's residence or place of business.
  - c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended:
    - (1) In the county of the defendant's residence or place of business; or
    - (2) If the amount of the claim is less than five hundred dollars and is not from a telephone or mail order transaction, in the county where the transaction occurred or in the county of the defendant's residence or place of business.

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<sup>158</sup> Section 27-08.1-01 was also amended by section 1 of House Bill No. 1458, chapter 297.

- d. If the defendant is an individual and the claim is not made under subdivision b or c, in the county of the defendant's residence.
  - e. If the defendant is an individual and the claim arose as the result of the defendant's lease of real property, in the county where the defendant resides or in the county where the real property is located.
3. The Except for an action under subdivision e of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. No claim may be filed by an assignee of that claim. No garnishment or attachment may issue from this court.

<sup>159</sup> **SECTION 2. AMENDMENT.** Section 27-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-08.1-02. Commencement of action - Claim affidavit.** Actions in the small claims court ~~shall be~~ are commenced whenever any person executes and files with the court a claim affidavit, and causes to be served by a person of legal age, not a party to or interested in the action, the affidavit on the defendant or mails it to ~~him~~ the defendant by certified mail along with an order for appearance setting a hearing. The hearing must be not less than ten days and not more than thirty days after the service or receipt of the order. The Except for an action under subdivision e of subsection 2 of section 27-08.1-01, the mailing, or personal service, may be made anywhere within the state.

Approved March 21, 1995

Filed March 23, 1995

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<sup>159</sup> Section 27-08.1-02 was also amended by section 1 of Senate Bill No. 2118, chapter 298.

## CHAPTER 297

## HOUSE BILL NO. 1458

(Representatives Koppelman, Belter, Grumbo, Kretschmar)  
(Senators Nalewaja, Christmann)

## SMALL CLAIMS COURT JURISDICTION

AN ACT to amend and reenact subsection 1 of section 27-08.1-01 and section 27-08.1-03 of the North Dakota Century Code, relating to small claims court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>160</sup> SECTION 1. AMENDMENT. Subsection 1 of section 27-08.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction shall be known and referred to as the "small claims court". The jurisdiction of ~~such~~ this court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed ~~three~~ five thousand dollars.

SECTION 2. AMENDMENT. Section 27-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor.** No formal pleadings other than the claim affidavit and order for appearance shall be required, and the hearing and disposition of actions shall be informal. No court reporter shall be required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed ~~three~~ five thousand dollars, which must be served upon the plaintiff by a person of legal age not a party to or interested in the action, or mailed to him by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule does not apply to counterclaims in excess of ~~three~~ five thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims

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<sup>160</sup> Section 27-08.1-01 was also amended by section 1 of House Bill No. 1451, chapter 296.



court. A fee as prescribed in subsection 2 of section 11-17-04 must be charged for filing the claim affidavit.

**Approved March 21, 1995**

**Filed March 23, 1995**

## CHAPTER 298

## SENATE BILL NO. 2118

(Judiciary Committee)

(At the request of the Supreme Court)

## SMALL CLAIMS ACTION COMMENCEMENT

AN ACT to amend and reenact section 27-08.1-02 of the North Dakota Century Code, relating to commencement of small claims actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>161</sup> SECTION 1. AMENDMENT. Section 27-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-08.1-02. Commencement of action - Claim affidavit.** Actions in the small claims court ~~shall be~~ are commenced whenever any person executes and files with the court a claim affidavit, and causes to be served by a person of legal age, not a party to or interested in the action, the affidavit on the defendant or mails it to ~~him~~ the defendant by certified mail along with ~~an order for appearance setting a hearing.~~ The a form upon which the defendant must indicate whether a hearing is requested and whether the defendant intends to remove the action to district court. If, within twenty days of service of the affidavit and form, the court has not received a request for a hearing, or if the defendant indicates that a hearing is not requested, a hearing will not be scheduled and judgment may be entered against the defendant by default. If the defendant requests a hearing, the hearing must be not less than ten days and not more than thirty days after the service or receipt of the order request. The mailing, or personal service, may be made anywhere within the state. Forms used in small claims court actions must be approved by the state court administrator and obtained from, or at the direction of, the clerk of district court.

Approved March 17, 1995

Filed March 20, 1995

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<sup>161</sup> Section 27-08.1-02 was also amended by section 2 of House Bill No. 1451, chapter 296.

**CHAPTER 299****HOUSE BILL NO. 1151**

(Transportation Committee)

(At the request of the Attorney General)

**DUI TESTING OF MINORS**

AN ACT to amend and reenact subsection 10 of section 27-20-02 and section 39-20-01 of the North Dakota Century Code, relating to the definition of unruly child and to implied consent to determine alcohol and drug content of blood.

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

<sup>162</sup> **SECTION 1. AMENDMENT.** Subsection 10 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

10. "Unruly child" means a child who:
  - a. Is habitually and without justification truant from school;
  - b. Is habitually disobedient of the reasonable and lawful commands of ~~his~~ the child's parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of ~~himself~~ the child or others;
  - c. Has committed an offense applicable only to a child;
  - d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; or
  - e. Has committed an offense in violation of section 39-08-18 or ~~purchased; attempted to purchase; possessed; or consumed alcoholic beverages~~ 5-01-08; and
  - f. In any of the foregoing instances is in need of treatment or rehabilitation.

**SECTION 2. AMENDMENT.** Section 39-20-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>162</sup> Section 27-20-02 was also amended by section 8 of Senate Bill No. 2264, chapter 124.

**39-20-01. Implied consent to determine ~~alcoholic~~ alcohol and drug content of blood.** Any person who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the ~~alcoholic~~ alcohol, other drug, or combination thereof, content of the blood. As used in this chapter the word "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the ~~alcoholic~~ alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-20-03, under arrest and informing that person that the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to three years of the person's driving privileges. The law enforcement officer shall determine which of the tests is to be used. When a ~~child~~ person under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall ~~diligently~~ attempt to contact the ~~child's~~ person's parent or legal guardian to explain the cause for the custody ~~and the implied consent chemical testing requirements~~. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the person in custody.

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 300****SENATE BILL NO. 2044**

(Legislative Council)

(Interim Budget Committee on Youth Services)

(Senator Robinson)

(Representatives Kunkel, Boucher)

**SEVERELY EMOTIONALLY DISTURBED CHILD  
TREATMENT SERVICES**

AN ACT to create and enact a new subdivision to subsection 2 of section 27-20-03 and a new section to chapter 50-06 of the North Dakota Century Code, relating to treatment services for severely emotionally disturbed children.

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

**SECTION 1.** A new subdivision to subsection 2 of section 27-20-03 of the North Dakota Century Code is created and enacted as follows:

Proceedings arising under section 2 of this Act to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.

**SECTION 2.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Treatment services for severely emotionally disturbed child.** The department may establish a program in up to three human service regions to provide out-of-home treatment services for a severely emotionally disturbed child. Before a child may be placed in an out-of-home treatment program established under this section, the juvenile court must make a judicial determination that the placement is in the best interests of the child. The department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in an out-of-home treatment program when the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems.

Approved April 12, 1995

Filed April 13, 1995

**CHAPTER 301****SENATE BILL NO. 2347**

(Senators Watne, C. Nelson, Traynor)  
(Representative Timm)

**CHILD DEPRIVATION PROCEEDING VENUE**

AN ACT to amend and reenact section 27-20-11 of the North Dakota Century Code, relating to venue in child deprivation proceedings.

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

**SECTION 1. AMENDMENT.** Section 27-20-11 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-11. Venue.** A proceeding under this chapter may be commenced in the county in which the child resides. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced, the county in which the child has resided the majority of the thirty days prior to the date of the alleged deprivation, or the county where the alleged deprivation has occurred. The court shall determine the appropriate venue for a deprivation action based upon the best interests of the child.

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 302****SENATE BILL NO. 2229**

(Senators Nalewaja, Scherber, Grindberg)

(Representatives Carlson, Kelsch, Price)

**JUVENILE COURT COSTS AND EXPENSES**

AN ACT to amend and reenact subsection 2 of section 27-20-49 of the North Dakota Century Code, relating to costs and expenses of parties in juvenile court.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

2. The supreme court shall pay reasonable compensation for services and related expenses of counsel appointed by the court for a party and reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be borne by that state agency at the state mileage rate excluding meals and lodging.

Approved March 15, 1995

Filed March 15, 1995

## CHAPTER 303

## SENATE BILL NO. 2093

(Senators Nalewaja, Solberg, Grindberg, Robinson)  
(Representatives Kelsch, Carlisle)

## JUVENILE COURT RECORD DISCLOSURE

AN ACT to amend and reenact section 27-20-51 of the North Dakota Century Code, relating to disclosure of juvenile court records; and to declare an emergency.

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

<sup>163</sup> SECTION 1. AMENDMENT. Section 27-20-51 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

## 27-20-51. Inspection of court files and records.

1. Except as provided in subsection 2, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are confidential and may not be disclosed to the public. ~~Such~~ Juvenile court files and records are open to inspection only by:
  - a. The judge and staff of the juvenile court.
  - b. The parties to the proceeding or their counsel or the guardian ad litem of any party.
  - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
  - d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who, ~~prior thereto~~ prior to the criminal case, had been a party to the proceeding in juvenile court.
  - e. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 54-23.4.
  - f. A staff member of the division of children and family services of the department of human services or a law enforcement officer when necessary for the performance of that person's duties under section

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<sup>163</sup> Section 27-20-51 was also amended by section 16 of Senate Bill No. 2264, chapter 124, and section 1 of Senate Bill No. 2090, chapter 304.



50-11.1-06.2 or the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119 et seq.].

2. ~~Such~~ Juvenile court files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:
  - a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
  - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.
3. In a proceeding under this chapter, if the juvenile court finds that a child committed a delinquent or unruly act ~~which~~ that constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall; ~~within ten days~~; report the finding to the director of the department of transportation within ten days.

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

Approved March 17, 1995  
Filed March 20, 1995

## CHAPTER 304

## SENATE BILL NO. 2090

(Senators Nalewaja, Solberg, Grindberg, Robinson)  
(Representative Carlisle)

## JUVENILE COURT RECORD INSPECTION

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20-51 of the North Dakota Century Code, relating to persons who may inspect juvenile court records; to amend and reenact section 50-11-02 of the North Dakota Century Code, relating to background checks of persons present in licensed foster care facilities while services are being provided; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>164</sup> SECTION 1. A new subdivision to subsection 1 of section 27-20-51 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

An employee or agent of the department of human services when necessary for performance of that individual's duty under chapter 50-11 or 50-11.1 to investigate the background of an individual living or working in the facility, home, or residence for which licensure is sought.

SECTION 2. AMENDMENT. Section 50-11-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-11-02. License granted - Term - Conditions. A

1. The department shall grant a license for the operation of a facility receiving persons for foster care ~~must be granted~~, for a period of not more than two years, ~~by the department~~ to reputable and responsible persons upon showing that:
  - 1+ a. The premises to be used are in fit sanitary condition and properly equipped to provide good care for all persons who may be received;
  - 2+ b. The persons in active charge of the facility are properly qualified to carry on efficiently the duties required of them;
  - 3+ c. The facility is likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all persons cared for ~~therein~~ in the facility; and

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<sup>164</sup> Section 27-20-51 was also amended by section 16 of Senate Bill No. 2264, chapter 124, and section 1 of Senate Bill No. 2093, chapter 303.

4. d. The facility will be maintained according to the standards prescribed for its conduct by the rules of the department.
2. Before licensing a facility for foster care, the department may investigate the background of an individual living or working in the facility in accordance with rules of the department to determine whether any individual has a criminal record.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 5, 1995

Filed April 5, 1995

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 305

### HOUSE BILL NO. 1369

(Representatives Payne, Berg)  
(Senators Goetz, Tallackson)

## PRODUCTS LIABILITY ACTIONS AND DAMAGES

AN ACT to create and enact three new sections to chapter 28-01.3 of the North Dakota Century Code, relating to limitations, rebuttable presumptions against defects, and exemplary damages in products liability actions; and to amend and reenact section 32-03.2-11 of the North Dakota Century Code, relating to exemplary damages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new sections to chapter 28-01.3 of the 1993 Supplement to the North Dakota Century Code are created and enacted as follows:

#### Declaration of legislative findings and intent.

1. The legislative assembly finds that products liability reforms enacted in 1979, 1987, and 1993 have provided a needed degree of certainty in the laws governing civil actions against product manufacturers and sellers.
2. In recent years it has become increasingly evident that there are still serious problems with the current civil justice system. As a result, there is an urgent need for additional legislation to establish clear and predictable rules with respect to certain matters relating to products liability actions.
3. The purpose of the following sections is to clarify and improve the method of determining responsibility for the payment of damages in products liability litigation; to restore balance and predictability between the consumer and the manufacturer or seller in product liability litigation; to bring about a more fair and equitable resolution of controversies in products liability litigation; to reenact a statute of repose to provide a reasonable period of time for the commencement of products liability litigation after a manufacturer or seller has parted with possession of its product; to address problems that have been created by judicial interpretation of our previous enactments; to enact, with minor changes, several provisions of former chapter 28-01.1; and to simplify and provide an increased degree of certainty and predictability to our products liability laws.

#### Statute of limitation and repose.

1. Except as provided in subsections 4 and 5, there may be no recovery of damages in a products liability action unless the injury, death, or property damage occurs within ten years of the date of initial purchase

for use or consumption, or within eleven years of the date of manufacture of a product.

2. This section applies to all persons, regardless of minority or other legal disability.
3. If a manufacturer, wholesaler, or retailer issues a recall of a product in any state or becomes aware of any defect in a product at any time and fails to take reasonable steps to warn users of the product defect, the provisions of subsection 1 do not bar a products liability action against the manufacturer or seller by a user of the product who is subsequently injured or damaged as a result of the defect.
4. An action to recover damages based on injury allegedly resulting from exposure to asbestos composed of chrysotile, amosite, crocidolite, tremolite, anthrophyllite, actinolite, or any combination thereof, must be commenced within three years after the injured person has been informed of discovery of the injury by competent medical authority and that the injury was caused by exposure to asbestos as described in this subsection, or within three years after the discovery of facts that would reasonably lead to the discovery, whichever is earlier. No action commenced under this subsection based on the doctrine of strict liability in tort may be commenced or maintained against any seller of a product that is alleged to contain or possess a defective condition unreasonably dangerous to the buyer, user, or consumer unless the seller is also the manufacturer of the product or the manufacturer of the part of the product claimed to be defective.
5. An action to recover damages based on injury to property allegedly resulting from the presence of products containing asbestos fibers of any type must be commenced within six years of the date upon which the owner of that property knew or should have known of facts giving rise to the cause of action.

Rebuttable presumption against defects. There is a rebuttable presumption that a product is free from any defect or defective condition where the plans, designs, warnings, or instructions for the product or the methods and techniques of manufacturing, inspecting, and testing the product were in conformity with government standards established for that industry or where no government standards exist then with applicable industry standards, which were in existence at the time the plans, designs, warnings, or instructions for the product or the methods and techniques of manufacturing, inspecting, and testing the product were adopted.

**SECTION 2. AMENDMENT.** Section 32-03.2-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-03.2-11. When court or jury may give exemplary damages.**

1. In any action for the breach of an obligation not arising from contract, when the defendant has been guilty by clear and convincing evidence of oppression, fraud, or actual malice, ~~actual or presumed~~, the court or jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an

applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

2. If either party so elects, the trier of fact shall first determine whether compensatory damages are to be awarded before addressing any issues related to exemplary damages. Evidence relevant only to the claim for exemplary damages is not admissible in the proceeding on liability for compensatory damages. If an award of compensatory damages has been made, the trier of fact shall determine whether exemplary damages are to be awarded.
3. Evidence of a defendant's financial condition or net worth is not admissible in the proceeding on exemplary damages.
4. If the trier of fact determines that exemplary damages are to be awarded, the amount of exemplary damages may not exceed two times the amount of compensatory damages or two hundred fifty thousand dollars, whichever is greater; provided, however, that no award of exemplary damages may be made if the claimant is not entitled to compensatory damages. In a jury trial, the jury may not be informed of the limit on damages contained in this subsection. Any jury award in excess of this limit must be reduced by the court.
5. In order for a party to recover exemplary damages, the finder of fact shall find by clear and convincing evidence that the amount of exemplary damages awarded is consistent with the following principles and factors:
  - a. Whether there is a reasonable relationship between the exemplary damage award claimed and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred;
  - b. The degree of reprehensibility of the defendant's conduct and the duration of that conduct; and
  - c. Any of the following factors as to which evidence is presented:
    - (1) The defendant's awareness of and any concealment of the conduct;
    - (2) The profitability to the defendant of the wrongful conduct and the desirability of removing that profit and of having the defendant also sustain a loss; and
    - (3) Criminal sanctions imposed on the defendant for the same conduct that is the basis for the exemplary damage claim, these to be taken into account if offered in mitigation of the exemplary damage award.

6. Exemplary damages may not be awarded against a manufacturer or seller if the product's manufacture, design, formulation, inspection, testing, packaging, labeling, and warning complied with:
  - a. Federal statutes existing at the time the product was produced;
  - b. Administrative regulations existing at the time the product was produced that were adopted by an agency of the federal government which had responsibility to regulate the safety of the product or to establish safety standards for the product pursuant to a federal statute; or
  - c. Premarket approval or certification by an agency of the federal government.
7. The defense in subsection 6 does not apply if the plaintiff proves by clear and convincing evidence that the product manufacturer or product seller:
  - a. Knowingly and in violation of applicable agency regulations withheld on misrepresented information required to be submitted to the agency, which information was material and relevant to the harm in question; or
  - b. Made an illegal payment to an official of the federal agency for the purpose of securing approval of the product.
8. Exemplary damages may be awarded against a principal because of an act by an agent only if at least one of the following is proved by clear and convincing evidence to be true:
  - a. The principal or a managerial agent authorized the doing and manner of the act;
  - b. The agent was unfit and the principal or a managerial agent was reckless in employing or retaining the agent;
  - c. The agent was employed in a managerial capacity and was acting in the scope of employment; or
  - d. The principal or managerial agent ratified or approved the doing and manner of the act.

## CHAPTER 306

### HOUSE BILL NO. 1051

(Legislative Council)

(Interim Jobs Development Commission)

(Representatives Grumbo, Tollefson, Nichols, Nicholas)

(Senators Krauter, St. Aubyn)

### AIRCRAFT PRODUCT LIABILITY

AN ACT relating to product liability actions against manufacturers of general aviation light aircraft.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### SECTION 1. Definitions. As used in this Act:

1. "Aircraft" means general aviation light craft that is powered and intended to fly above the ground; is designed to carry one person or more, but with a maximum seating capacity of fewer than twenty passengers; and weighs less than twelve thousand five hundred pounds [5669.9 kilograms].
2. "Aircraft component" means a manufactured part or assembly intended for use in the construction, replacement, or repair of an aircraft. The term includes any complete aircraft subsystem, including the aircraft engine, that carries its own manufacturer's warranty or services provided separately from the warranty of the manufacturer of the aircraft.
3. "Aviation manufacturer" means a manufacturer of aircraft or aircraft components who has its place of manufacture and place of production of aircraft or aircraft components located within this state. The term includes a manufacturer located in this state who imports raw materials, components, and aircraft subassemblies from outside the state for manufacturing purposes. The term also includes a person who modifies, maintains, alters, repairs, or installs aircraft components in aircraft in accordance with federal aviation administration regulations and holds a repair station certificate issued by the federal aviation administration.
4. "State-of-the-art product" means an aircraft or aircraft component manufactured by utilizing the most recent scientific, mechanical, and technological developments at the time of manufacture.

#### SECTION 2. Compliance with federal standards - Presumptions and defenses.

1. There is a disputable presumption that a product is free from any defect or defective condition if the product was in compliance with:
  - a. Government standards established for that product; or
  - b. If no government standards exist, applicable industry standards that were in existence at the time of manufacture.



2. An aviation manufacturer or a seller of aircraft or aircraft components may utilize the presumption provided by subsection 1 if the manufacture, design, formulation, inspection, testing, packaging, labeling, or warning complied with:
  - a. Federal aviation administration or department of transportation regulations that relate to the safety or establish safety standards for the aircraft or aircraft component and which existed at the time the aircraft or aircraft component was produced;
  - b. Any premarket approval or certification by the federal aviation administration or any other federal agency; and
  - c. Applicable industry standards that were in existence at the time the plans, designs, warnings, or instructions for the aircraft or aircraft component or the methods and techniques of manufacturing, inspecting, and testing the product were adopted.
3. The presumption under subsection 1 is not available if the plaintiff proves by clear and convincing evidence that the aviation manufacturer or product seller knowingly and in violation of applicable agency regulations made misrepresentations, made illegal payments to an official for the purpose of securing approval, committed fraud, or concealed evidence.
4. There is an absolute defense to any product liability action brought against an aviation manufacturer when a claimant, in violation of federal aviation administration regulations, has used alcohol or illicit drugs while operating or using an aircraft or aircraft component.
5. This Act does not affect the authority of the federal aviation administration or any other federal agency with regard to the regulation of aircraft and aircraft components.

**SECTION 3. State-of-the-art defense.** An aviation manufacturer or seller of aircraft or aircraft components may not be held liable for any personal injury, death, or damage to property sustained as a result of an alleged defect in a state-of-the-art product. An aircraft or aircraft component is presumed to be a state-of-the-art product if the plaintiff cannot show by a preponderance of the evidence that a safer aircraft or aircraft component was on the market at the time of manufacture. No evidence of subsequent design or modification of an aircraft or aircraft component is admissible to prove that an aircraft or aircraft component is not a state-of-the-art product. The state-of-the-art comparisons must be made to products with similar-intended utility. The trier of the fact shall consider the defense that the designer's choice averted greater peril for a large subclass of intended users and shall consider the economic viability of the component or product.

**SECTION 4. Useful safe life - Statute of repose - Statute of limitation.**

1. An aviation manufacturer may not be held liable in a product liability action if the defendant establishes that the harm was caused after the period of useful safe life of the aircraft or aircraft component had expired. The useful safe life of an aircraft or aircraft component may be measured in units of time or in other units that accurately gauge the useful safe life of a product.

2. In a claim for relief that involves injury more than ten years after the date of first delivery of the aircraft or aircraft component to the first user, purchaser, or lessee, a disputable presumption arises that the harm was caused after the useful safe life had expired. The presumption may only be rebutted by clear and convincing evidence. If the aviation manufacturer or seller expressly warrants that its product can be utilized safely for a period longer than ten years, the period of repose is extended according to the warranty or promise.
3. With respect to any aircraft component that replaced another product originally in, or which was added to, the aircraft, and which is alleged to have caused the claimant's damages, no claim for damages may be made after the useful safe life of the component, the period stated in the warranty, or ten years after manufacture of the component, whichever is later.
4. A product liability action may not be brought more than two years after the time the claimant discovered, or in the exercise of due diligence should have discovered, the harm and cause of the action.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 307

## HOUSE BILL NO. 1286

(Representatives Kelsch, Austin, Mahoney)

(Senator Krebsbach)

PROFESSIONAL LICENSE SUSPENSION FOR  
STUDENT LOAN DEFAULT

AN ACT to amend and reenact section 28-25-11 of the North Dakota Century Code, relating to the suspension of an occupational or professional license for nonpayment of a defaulted state guaranteed student loan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-25-11 of the North Dakota Century Code is amended and reenacted as follows:

28-25-11. Property applied - Wages exempt - Suspension of occupational or professional license for nonpayment of defaulted state guaranteed student loans.

1. The judge may order any property of the judgment debtor not exempt from execution in the hands either of ~~himself~~ the judgment debtor or of any other person or due the judgment debtor to be applied towards the satisfaction of the judgment, except that the earnings of the debtor for ~~his~~ the debtor's personal services at any time within sixty days next preceding the order cannot be so applied when it is made to appear, by the debtor's affidavit or otherwise, that ~~such~~ the earnings are necessary for the use of a family supported wholly or partly by ~~his~~ the debtor's labor.
2. If the debt for which a judgment is entered is for a guaranteed student loan, the court, after considering the factors in subsection 1, shall address and make specific findings on the issue of whether the judgment debtor has an occupational or a professional certificate license or permit issued by or on behalf of the state or any occupational or professional boards, which the judgment debtor is required to obtain before engaging in the judgment debtor's occupation or profession. The court, based on principles of fairness, including consideration of whether the judgment debtor has been unjustly enriched, may suspend a judgment debtor's certificate, license, or permit. Following a decision to suspend a judgment debtor's certificate, license, or permit, the court shall notify the judgment debtor that the decision becomes final thirty days after the notification unless the judgment debtor satisfies the entire outstanding payment due or makes regular payment on the judgment in a manner and at times satisfactory to the court. The court shall notify the proper licensing authority of the court's decision to suspend a judgment debtor's certificate, license, or permit. A certificate, license, or permit suspended by an order issued under this section may be reissued only by order of the court. An appeal by a judgment debtor who has had a certificate,

license, or permit suspended under this section is an appeal from the court's order and may not be appealed to the licensing authority.

Approved March 31, 1995

Filed April 3, 1995

## CHAPTER 308

### SENATE BILL NO. 2429

(Senators Krebsbach, Kinnoin, Tomac, Traynor)  
(Representatives Kretschmar, Timm)

## ADMINISTRATIVE RULE NOTICE AND ADOPTION

AN ACT to amend and reenact subsection 11 of section 28-32-01 and subsections 4 and 5 of section 28-32-02 of the North Dakota Century Code, relating to the adoption of administrative rules.

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

<sup>165</sup> SECTION 1. AMENDMENT. Subsection 11 of section 28-32-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Rule" means the whole or a part of an agency statement of general applicability that implements; ~~interprets~~, or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:
  - a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
  - b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
    - (1) Enable law violators to avoid detection;
    - (2) Facilitate disregard of requirements imposed by law; or
    - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
  - c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
  - d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.

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<sup>165</sup> Section 28-32-01 was also amended by section 1 of Senate Bill No. 2405, chapter 309; section 10 of House Bill No. 1432, chapter 209; and section 4 of House Bill No. 1089, chapter 313.

- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is merely explanatory and not intended to have the force and effect of law.

<sup>166</sup> **SECTION 2. AMENDMENT.** Subsections 4 and 5 of section 28-32-02 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 4. The agency's notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent, provide a phone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The agency shall mail a copy of the notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse

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<sup>166</sup> Section 28-32-02 was also amended by section 2 of Senate Bill No. 2405, chapter 309, and section 1 of House Bill No. 1284, chapter 310.

between the later of the date of the second publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the second publication, whichever is later. Subject to subsection 5, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on the first business day of the following month to any person making a request. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of not less than thirty days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

5. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of subsection 4 and a procedure whereby any person may request and receive mailed copies of all filings made by agencies pursuant to subsection 4. The legislative council may charge for providing copies of the filings.

Approved March 17, 1995  
Filed March 20, 1995

**CHAPTER 309****SENATE BILL NO. 2405**

(Senator W. Stenehjem)

(Representative Svedjan)

**ADMINISTRATIVE RULES ADOPTION**

AN ACT to amend and reenact subsection 11 of section 28-32-01 and subsections 6 and 7 of section 28-32-02 of the North Dakota Century Code, relating to adoption of administrative rules.

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

<sup>167</sup> **SECTION 1. AMENDMENT.** Subsection 11 of section 28-32-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Rule" means the whole or a part of an agency statement of general applicability that implements, ~~interprets~~, or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the amendment, repeal, or suspension of an existing rule. The term does not include:
  - a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
  - b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
    - (1) Enable law violators to avoid detection;
    - (2) Facilitate disregard of requirements imposed by law; or
    - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
  - c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
  - d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.

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<sup>167</sup> Section 28-32-01 was also amended by section 1 of Senate Bill No. 2429, chapter 308; section 10 of House Bill No. 1432, chapter 209; and section 4 of House Bill No. 1089, chapter 313.



- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is merely explanatory and not intended to have the force and effect of law.

<sup>168</sup> SECTION 2. AMENDMENT. Subsections 6 and 7 of section 28-32-02 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 6. If the agency finds that emergency rulemaking is necessary because of imminent peril to the public health, safety, or welfare, ~~or~~ because a delay in rulemaking is likely to cause a loss of revenues appropriated to support a duty imposed by law upon the agency, or because reasonably necessary to avoid a delay in implementing an appropriations measure, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by subsection 4. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule. The agency's finding, and a brief statement of the reasons therefor, must be filed with the office of the legislative council, along with any final rule adopted. The agency shall take appropriate measures to make interim final rules known to every person who may be affected by them. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

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<sup>168</sup> Section 28-32-02 was also amended by section 2 of Senate Bill No. 2429, chapter 308, and section 1 of House Bill No. 1284, chapter 310.

7. Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable, or when the procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.

Approved April 3, 1995

Filed April 3, 1995

## CHAPTER 310

### HOUSE BILL NO. 1284

(Representatives Koppelman, Gorman, Kretschmar)  
(Senator Mutch)

## ADMINISTRATIVE RULES COMMITTEE AUTHORITY

AN ACT to amend and reenact subsection 1 of section 28-32-02 and sections 28-32-03 and 28-32-03.3 of the North Dakota Century Code, relating to the authority of the administrative rules committee over the effectiveness of administrative rules; and to provide an effective date.

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

<sup>169</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 28-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, ~~and from time to time to~~ amend, or repeal; reasonable rules in conformity with the provisions of this chapter and any statute administered or enforced by the agency.

**SECTION 2. AMENDMENT.** Section 28-32-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**28-32-03. Filing of rules - Force and effect of rules - Form and style of rules - Rules invalid unless in compliance with chapter.**

1. A copy of each rule adopted by an administrative agency, and the attorney general's opinion thereon, must be filed by the adopting agency with the office of the legislative council for publication in the North Dakota Administrative Code.
2. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council become effective the first day of the month after the month of publication as provided for in section 28-32-03.1, except that if a later date is required by statute ~~or~~, specified in the rule, or provided under section 28-32-03.3, the later date is the effective date. A rule found to be void by the committee on administrative rules is void from the time provided under section 28-32-03.3. If publication is delayed due to technological problems or lack of funds, nonemergency rules,

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<sup>169</sup> Section 28-32-02 was also amended by section 2 of Senate Bill No. 2429, chapter 308, and section 2 of Senate Bill No. 2405, chapter 309.

unless otherwise provided, become effective on the first day of the month after the month publication would have occurred but for the delay.

3. Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency, declared invalid by a final court decision, suspended or found to be void by the committee on administrative rules, or determined repealed by the office of the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.
4. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
5. A rule is invalid unless adopted in substantial compliance with this chapter. However, inadvertent failure to supply any person with a notice required by section 28-32-02 does not invalidate a rule. Notwithstanding subsection 2 of section 28-32-15, an action to contest the validity of a rule on the grounds of noncompliance with this chapter may not be commenced more than two years after the effective date of the rule.

**SECTION 3. AMENDMENT.** Section 28-32-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-03.3. Committee on administrative rules - Finding that rules are void - Objection to rules - Effects of objection.**

1. The legislative council's committee on administrative rules may find that all or any portion of a rule is void if that finding is made within ninety days after the date of the administrative code supplement in which the rule change appears or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that finding is made at the first meeting of the administrative rules committee following the regular session of the legislative assembly. The committee on administrative rules may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
  - a. An absence of statutory authority.
  - b. An emergency relating to public health, safety, or welfare.
  - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
  - d. A conflict with state law.

- e. Arbitrariness and capriciousness.
  - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.
2. Within three business days after the committee on administrative rules finds that a rule is void, the office of the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the committee on administrative rules. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative council has not disapproved by motion the finding of the committee on administrative rules, the rule is void.
3. If the legislative council's committee on administrative rules objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.
- 2+ a. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council shall also maintain a permanent register of all committee objections.
- 3+ b. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
- 4+ c. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
- 5+ d. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a

reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.

4. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the committee on administrative rules, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted by the agency to the legislative council for publication as amended, repealed, or created and reconsidered by the committee on administrative rules at a subsequent meeting at which public comment on the agreed rule change must be allowed.

**SECTION 4. AMENDMENT.** Section 28-32-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-03.3. Committee on administrative rules - Suspension of rules - Objection to rules - Effects of objection.**

1. The legislative council's committee on administrative rules may find, for any reason under this subsection, that all or any portion of a rule should be reviewed by the legislative assembly, and the committee may suspend the rule or portion of a rule under this subsection if the suspension is made within ninety days after the date of the administrative code supplement in which the rule change appears or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that suspension is made at the first meeting of the administrative rules committee following the regular session of the legislative assembly. A rule or a portion of a rule suspended under this subsection becomes permanently ineffective unless it is ratified by both houses of the legislative assembly during the next session of the legislative assembly, in which case it is effective as of the date of ratification by the second house of the legislative assembly. An agency seeking ratification of its rule shall introduce a bill for that purpose. The committee on administrative rules may suspend a rule or portion of a rule if the committee specifically finds that, with regard to the rule, there is:
  - a. An absence of statutory authority.
  - b. An emergency relating to public health, safety, or welfare.
  - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
  - d. A conflict with state law.
  - e. Arbitrariness and capriciousness.
  - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.

2. Within three business days after the committee on administrative rules suspends a rule, the office of the legislative council shall provide written notice of that suspension and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the committee on administrative rules. After receipt of the petition and before the next session of the legislative assembly, the legislative council by motion may lift the suspension and reinstate the rule's effectiveness.
3. If the legislative council's committee on administrative rules objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.
- 2- a. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council shall also maintain a permanent register of all committee objections.
- 3- b. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
- 4- c. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
- 5- d. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.
4. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the committee on administrative rules, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted by

the agency to the legislative council for publication as amended, repealed, or created and reconsidered by the committee on administrative rules at a subsequent meeting at which public comment on the agreed rule change must be allowed.

**SECTION 5. EFFECTIVE DATE - SUSPENSION.** This Act is effective for any rule adopted by an administrative agency after July 30, 1995. Section 4 of this Act is suspended from operation and becomes effective retroactive to August 1, 1995, upon a ruling by the North Dakota supreme court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of this Act is unconstitutional.

Approved April 21, 1995

Filed April 21, 1995



**CHAPTER 311****HOUSE BILL NO. 1024**

(Legislative Council)

(Interim Administrative Rules Committee)

(Representatives Freier, Gorman, Wilkie, Kretschmar)

(Senators Tennefos, Nalewaja)

**ENVIRONMENTAL RULES FROM FEDERAL  
GUIDELINES**

AN ACT to create and enact two new sections to chapter 28-32 of the North Dakota Century Code, relating to environmental rules adopted from federal guidelines.

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

**SECTION 1.** A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

**Repeal or waiver of certain environmental rules.**

1. An agency shall repeal or amend any existing rule that was adopted from federal environmental guidelines and which is not relevant to state regulatory programs.
2. An agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs when developing or modifying programs.
3. An agency shall seek a waiver from the United States environmental protection agency when the environmental protection agency is evaluating current programs or delegating or modifying programs to relieve the agency from complying with or adopting rules that are not relevant to state regulatory programs.

**SECTION 2.** A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

**Permit and procedural rules adopted by reference in appropriate circumstances.**

1. When adopting rules, an agency shall adopt by reference any applicable existing permit or procedural rules that may be adapted for use in a new or existing program.
2. An agency shall seek authorization from the United States environmental protection agency to adopt by reference applicable existing permit or procedural rules that may be adapted for use in a new or existing program when the environmental protection agency is delegating or modifying a program.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 312

### SENATE BILL NO. 2388

(Senators Bowman, Kinnoin, G. Nelson, Tomac)  
(Representatives Grosz, Nichols)

## GOVERNMENTAL TAKINGS ASSESSMENTS

AN ACT to create and enact a new section to chapter 28-32 of the North Dakota Century Code, relating to the preparation of taking assessments in an administrative rulemaking procedure and reconsideration of administrative rules.

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

**SECTION 1.** A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

#### **Takings assessment of government agency appeal.**

1. An agency shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
  - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
  - b. Clearly and specifically identify the purpose of the proposed rule.
  - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
  - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
  - e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
  - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.
2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency reconsider the application or need for the rule. Within thirty days of receiving the request, the agency shall consider the request and shall in writing inform the landowner whether the agency intends to keep the rule in place, modify application of the rule, or repeal the rule.

3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 313

### HOUSE BILL NO. 1089

(Judiciary Committee)

(At the request of the Office of Administrative Hearings)

## ADMINISTRATIVE HEARINGS JUDGES AND OFFICERS

AN ACT to create and enact a new section to chapter 28-32, a new subdivision to subsection 2 of section 51-19-09, and a new subsection to section 51-23-20 of the North Dakota Century Code, relating to duties of administrative law judges and hearings held by the securities commissioner; to amend and reenact section 10-14-12, subsection 1 of section 10-04-16, subsection 5 of section 28-32-01, subsection 1 of section 28-32-08.1, subsections 3 and 5 of section 54-57-01, sections 54-57-02, 54-57-03, 54-57-04, 54-57-05, and 54-57-07 of the North Dakota Century Code, relating to administrative hearings and the duties of administrative law judges; to repeal sections 10-04-13 and 54-57-06 of the North Dakota Century Code, relating to appeals from orders of the securities commissioner and to transfer and transition provisions for the office of administrative hearings; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 10-04-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-12. Hearings.** Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of ~~such the~~ securities, and if the application for registration of ~~such the~~ securities was filed by a registered dealer, to ~~such the~~ registered dealer, a notice of opportunity for hearing. Before entering an order refusing to register any person as a dealer, salesman, investment adviser, or investment adviser representative, as provided in section 10-04-10, or revoking the registration of any person as a registered dealer, salesman, investment adviser, or investment adviser representative as provided in section 10-04-11, the commissioner shall send to ~~such that~~ person, and if ~~such that~~ person is a salesman or investment adviser representative or an applicant for registration as a salesman or investment adviser representative, to the registered dealer or investment adviser who employs or proposes to employ ~~such that~~ salesman or investment adviser representative, a notice of opportunity for hearing.

1. Notices of opportunity for hearing must be sent by registered ~~or certified~~ mail, returned receipt requested, to the addressee's business address, and ~~such the~~ notice ~~shall must~~ state:
  - a. The order ~~which~~ the commissioner proposes to issue.
  - b. The grounds for issuing ~~such the~~ proposed order.
  - c. That the person to whom ~~such the~~ notice is sent ~~will may~~ be afforded a hearing upon request to the commissioner if ~~such the~~ request is made within ten days after receipt of the notice.

2. Whenever a person requests a hearing in accordance with the provisions of this section, the commissioner shall immediately set a date, time, and place for such the hearing and shall forthwith notify the person requesting such the hearing thereof. The date set for such the hearing must be within fifteen days, but not earlier than five days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting such the hearing.
3. For the purpose of conducting any hearing as provided in this section, the commissioner shall have the power to call any party to testify under oath at such hearings; to require the attendance of witnesses; the production of books, records, and papers; and to take the depositions of witnesses; and for that purpose the commissioner is authorized; at the request of the person requesting such hearing or upon his own initiative; to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers; directed to the sheriff of the county where such witness resides or is found; which shall be served and returned. The fees and mileage of the sheriff and witnesses must be paid from the fund in the state treasury for the use of the commissioner in the same manner that other expenses of the commissioner are paid.
4. At any Any hearing conducted under this section; a party or an affected person may appear in his own behalf or may be represented by an attorney. A stenographic record of the testimony and other evidence submitted must be taken unless the commissioner and the person requesting such hearing shall agree that such a stenographic record of the testimony shall not be taken. The commissioner shall pass upon the admissibility of evidence; but a party may at any time make objections to the rulings of the commissioner thereon; and if the commissioner refuses to admit evidence the party offering the same shall make a proffer thereof and such proffer must be made a part of the record of such hearing.
5. In any hearing under this section; the commissioner may conduct such hearing or he may appoint a referee who shall have the same powers and authority in conducting such hearings as are in this section granted to the commissioner. Such referee shall have been admitted to the practice of law in this state and be possessed of such additional qualifications as the commissioner may require. If a hearing is conducted by a referee such referee shall submit to the commissioner a written report setting forth his findings of fact and conclusions of law and a recommendation of the action to be taken by the commissioner. A copy of such written report and recommendations must within five days of the time of filing thereof be served upon the person who requested the hearing; or his attorney or other representative of record; by registered or certified mail. That person or his attorney may, within ten days of receipt of the copy of such written report and recommendations; file with the commissioner written objections to the report and recommendations which must be considered by the commissioner before entering an order. No recommendations of the referee may be approved; modified; or disapproved by the commissioner until after ten days after service of such report and recommendations as herein provided. The recommendations of the referee may be approved; modified; or disapproved by the commissioner. The commissioner may order additional testimony to be taken or permit the introduction of

further documentary evidence. A transcript of testimony and evidence, objections, if any, of the parties, and additional testimony and evidence, if any, shall have the same force and effect as if such hearing or hearings had been conducted by the commissioner. All recommendations of the referee to the commissioner are advisory only and do not have the effect of an order of the commissioner must be conducted in accordance with chapter 28-32.

- 6- 4. If the commissioner does not receive a request for a hearing within the prescribed time, he the commissioner may enter the proposed a final order. If a hearing is requested and conducted with respect to a proposed order, the commissioner shall issue a written order which must set forth his the findings with respect to the matters involved and enter an order in accordance with his findings.

<sup>170</sup> SECTION 2. AMENDMENT. Subsection 1 of section 10-04-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Issue any order including; ~~but not limited to;~~ cease and desist, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any ~~regulation~~, rule, or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The attorney general, upon the commissioner's request, may bring actions to recover penalties pursuant to this section in district court. However, any person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if ~~such~~ the request is made within ten days after receipt of the order. The provisions of subsections 2, 3, and 4; ~~and 5~~ of section 10-04-12 apply to any hearing conducted ~~hereunder~~ under this subsection. If, after a hearing, the commissioner ~~shall sustain~~ sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:
  - a. The order of the commissioner from which the appeal is taken.
  - b. The grounds upon which a reversal or modification of ~~such~~ the order is sought.
  - c. A demand for a certified transcript of the record of ~~such~~ the order.

~~The provisions of subdivisions a and b of subsection 3 of section 10-04-13 apply to an appeal hereunder.~~

<sup>170</sup> Section 10-04-16 was also amended by section 5 of House Bill No. 1165, chapter 100.

SECTION 3. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Duties of hearing officers. It is the duty of all hearing officers to:

1. Assure that proper notice has been given as required by law.
2. Conduct only hearings and related proceedings for which proper notice has been given.
3. Assure that all hearings and related proceedings are conducted in a fair and impartial manner.
4. Make recommended findings of fact and conclusions of law and issue a recommended order, when appropriate.
5. Conduct the hearing only and perform such other functions of the proceeding as requested, when an agency requests a hearing officer to preside only as a procedural hearing officer. If the hearing officer is presiding only as a procedural hearing officer, the agency head must be present at the hearing and the agency head shall make findings of fact and conclusions of law and issue a final order. The agency shall give proper notice as required by law. The procedural hearing officer may issue orders in regard to the conduct of the hearing pursuant to statute or rule and to otherwise effect an orderly and prompt disposition of the proceedings.
6. Make findings of fact and conclusions of law and issue a final order, if required by statute or requested by an agency.
7. Function only as a procedural hearing officer, when an agency requests a hearing officer to preside for a rulemaking hearing. The agency head need not be present. The agency shall give proper notice as required by law.
8. Perform any and all other functions required by law, assigned by the director of administrative hearings, or delegated to the hearing officer by the agency.

<sup>171</sup> SECTION 4. AMENDMENT. Subsection 5 of section 28-32-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or

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<sup>171</sup> Section 28-32-01 was also amended by section 1 of Senate Bill No. 2429, chapter 308; section 1 of Senate Bill No. 2405, chapter 309; and section 10 of House Bill No. 1432, chapter 209.

any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.

**SECTION 5. AMENDMENT.** Subsection 1 of section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer. Any person from the office of administrative hearings presiding for the agency as a hearing officer in an administrative proceeding must be referred to as an administrative law judge.

<sup>172</sup> **SECTION 6.** A new subdivision to subsection 2 of section 51-19-09 of the North Dakota Century Code is created and enacted as follows:

If a hearing is requested or ordered under this section, it must be conducted in accordance with chapter 28-32.

<sup>173</sup> **SECTION 7.** A new subsection to section 51-23-20 of the North Dakota Century Code is created and enacted as follows:

If a hearing is requested or ordered under this section, it must be conducted in accordance with chapter 28-32.

**SECTION 8. AMENDMENT.** Subsections 3 and 5 of section 54-57-01 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative ~~hearings officers~~ law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 3 of this Act and to provide administrative ~~hearings officers~~ law judges to preside at administrative hearings as requested by agencies. After the effective date of this Act, the director of administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state bar board. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative ~~hearings officers~~ law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative ~~hearings officer~~ law judge must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the

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<sup>172</sup> Section 51-19-09 was also amended by section 13 of House Bill No. 1165, chapter 100.

<sup>173</sup> Section 51-23-20 was also amended by section 20 of House Bill No. 1165, chapter 100.



~~officer's~~ person's ability to function officially in a fair and objective manner.

5. The director of administrative hearings shall develop categories of positions in the classified service under class titles for the appointment or employment of ~~hearings officers~~ administrative law judges and support staff in consultation with and approved by the director of the central personnel division, including the salary to be paid for each position or category of position.

**SECTION 9. AMENDMENT.** Section 54-57-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-57-02.** Temporary administrative ~~hearings officers~~ law judges. When regularly appointed administrative ~~hearings officers~~ law judges are not available, the director of administrative hearings may contract on a temporary basis with qualified individuals to serve as administrative ~~hearings officers~~ law judges for the office of administrative hearings. Temporary administrative law judges are not employees of the state.

**SECTION 10. AMENDMENT.** Section 54-57-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-57-03.** Hearings before administrative ~~hearings officers~~ law judges.

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all hearings of administrative agencies under chapter 28-32, except hearings conducted by the public service commission, the industrial commission, the commissioner of insurance, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the commissioner of labor, except investigatory hearings under section 28-32-08, and except rulemaking hearings held in accordance with section 28-32-02, must be conducted by the office of administrative hearings in accordance with the administrative hearings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapters 12-56.1 and 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.
2. The agency head shall make a written request to the director requesting the designation of ~~a hearings officer~~ an administrative law judge for each administrative hearing to be held. An agency may request ~~a hearings officer~~ an administrative law judge to be designated to preside over the entire administrative proceeding. ~~If a statute so requires, an agency shall, or unless a statute prohibits, an agency may, request that the hearings officer designated issue the final order in the matter.~~ Informal disposition of an administrative proceeding may be made by an agency

at any time before or after the designation of a hearings officer an administrative law judge from the office of administrative hearings.

3. If a party to an administrative proceeding is in default, prior to the hearing, the agency may issue a default order and a written notice of default, including a statement of the grounds for default, prior to the hearing. The agency shall determine all the issues involved. If issued, the default notice and order must be served upon all the parties and the hearings officer administrative law judge, if one has been assigned. After service of the default notice and order, if a hearing is necessary to complete the administrative action with or without the participation of the party in default, a hearings officer an administrative law judge from the office of administrative hearings must preside.
4. When assigning administrative hearings officers law judges to conduct administrative hearings or to preside in an administrative proceeding, the director shall attempt to assign a hearings officer an administrative law judge having expertise in the subject matter to be dealt with.
5. The director of administrative hearings may assign an administrative hearings officer law judge to preside in an administrative proceeding, upon request, to any agency exempted from the provisions of this section, to any agency, or part of any agency, that is not an administrative agency subject to the provisions of chapter 28-32, to any unit of local government in this state, to any tribal government in this state, to the judicial branch, or to any agency to conduct a rulemaking hearing.

**SECTION 11. AMENDMENT.** Section 54-57-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-57-04. Duties of administrative hearings officers law judges.** It is the duty of all administrative hearings officers law judges to:

- 1- Advise an agency that has requested a hearings officer, and other affected interests and parties, about the location and time for an administrative hearing, or related proceeding, to be held; in order to allow for participation by all affected interests and parties. The hearings officer shall give proper notice as required by law.
- 2- Conduct only hearings and related proceedings for which proper notice has been given.
- 3- Assure that all hearings and related proceedings are conducted in a fair and impartial manner.
- 4- When appropriate, make findings of fact, conclusions of law, and recommendations; taking notice whether the agency has documented its statutory authority to take the proposed action; fulfilled all relevant substantive and procedural requirements of law or rule; and, in rulemaking proceedings, conformed to the provisions of chapter 28-32.
- 5- Perform any and all other functions required by law; assigned by the director of administrative hearings; or delegated to the hearings officers by the agency.

6. ~~When an agency requests a hearings officer to preside only as a procedural hearings officer, the hearings officer may only conduct the hearing and perform such other functions of the proceeding as requested. If the hearings officer is presiding only as a procedural hearings officer, the agency head must be present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing. The procedural hearings officer may issue orders in regard to the conduct of the hearing, pursuant to statute or rule, and to otherwise effect an orderly and prompt disposition of the proceedings comply with the duties of hearing officers under section 3 of this Act for all hearings of administrative agencies under chapter 28-32, as well as for all hearings of administrative agencies not under chapter 28-32, in accordance with applicable laws.~~

**SECTION 12. AMENDMENT.** Section 54-57-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-57-05. Uniform rules of administrative practice or procedure - Effective date - ~~Hearings officer~~ Administrative law judge rules.**

1. The director of administrative hearings shall adopt, in accordance with chapter 28-32, rules of administrative hearings practice or procedure which implement chapter 28-32 and which aid in the course and conduct of all administrative hearings and related proceedings conducted by administrative agencies under chapter 28-32. ~~The uniform rules must be effective January 1, 1992.~~ The uniform rules must be used by all administrative agencies subject to chapter 28-32 which do not have their own rules of administrative hearings practice or procedure governing the course and conduct of hearings. If an administrative agency's rules are silent on any aspect of the agency's administrative hearings practice or procedure, the applicable uniform rule governs.
2. The director of administrative hearings may adopt rules to further establish qualifications for ~~hearings officers~~ administrative law judges; to establish procedures for requesting and designating ~~hearings officers~~ administrative law judges; and to facilitate the performance of duties and responsibilities conferred by this chapter. Any rules adopted by the director of administrative hearings pursuant to this subsection must be adopted in accordance with chapter 28-32.

**SECTION 13. AMENDMENT.** Section 54-57-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-57-07. Compensation for provision of ~~hearings officers~~ administrative law judges - Special fund established - Continuing appropriation.**

1. The office of administrative hearings may require payment for services rendered by any administrative ~~hearings officer~~ law judge provided by it to any agency, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment may include payment for support staff necessary to render ~~hearings officer~~ administrative law judge services. General fund moneys may not be used for payment by state agencies pursuant to this subsection except for those payments required of the department of human services and the state department

of health and consolidated laboratories. Moneys received by the office of administrative hearings in payment for providing an administrative ~~hearings officer~~ law judge to conduct an administrative hearing and related proceedings must be deposited into the operating fund of the office of administrative hearings.

2. The office of administrative hearings may require payment for mileage, meals, and lodging in connection with services rendered by an administrative ~~hearings officer~~ law judge provided to any agency, ~~or to any unit of local government in this state, to any tribal government in this state, or to the judicial branch~~, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment for meals and lodging must be in the amounts allowable under section 44-08-04. Payment for mileage when using state vehicles must be in amounts set for user charges under section 24-02-03.5. All other payments must be in amounts allowed for other state officials and employees. Either general fund or special fund moneys, or other income, may be used for the payment of mileage, meals, and lodging under this subsection.
3. A special fund is established in the state treasury and designated as the administrative hearings fund. The director of administrative hearings shall deposit in the fund all moneys received by the office of administrative hearings in payment for providing temporary administrative ~~hearings officers~~ law judges to conduct administrative hearings and related proceedings under this chapter, as well as all moneys received by the office in payment for mileage, meals, and lodging in connection with providing any administrative ~~hearings officer~~ law judge to conduct an administrative hearing and related proceedings. The moneys in the fund are a standing and continuing appropriation and are appropriated, as necessary, for the following purposes:
  - a. For the director of administrative hearings to contract with and make payment to temporary administrative ~~hearings officers~~ law judges, as necessary, for the purpose of providing requested administrative ~~hearings officers~~ law judges to agencies ~~or, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch~~.
  - b. For the director of administrative hearings to pay mileage, meals, and lodging to any ~~hearings officers~~ administrative law judges, as necessary, in connection with the services to be provided by this chapter.

**SECTION 14. REPEAL.** Section 10-04-13 of the North Dakota Century Code and section 54-57-06 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 15. LEGISLATIVE COUNCIL STUDY OF ADMINISTRATIVE VERSUS COURT PROCEEDINGS IN DRIVING OFFENSES.** The legislative council shall consider studying the proper role of the administrative hearings process in suspension or revocation of motor vehicle operators' licenses in light of recent court decisions on double jeopardy issues. The legislative council shall report its findings and recommendations, and any legislation necessary to implement the recommendations, to the fifty-fifth legislative assembly.

Approved April 18, 1995

Filed April 18, 1995

**CHAPTER 314****SENATE BILL NO. 2122**

(Judiciary Committee)

(At the request of the Office of Administrative Hearings)

**ADMINISTRATIVE PROCEEDING SUBPOENAS,  
DISCOVERY, AND ORDERS**

AN ACT to amend and reenact subsections 1 and 7 of section 28-32-09 of the North Dakota Century Code, relating to subpoenas, discovery, and protective orders in administrative proceedings.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 7 of section 28-32-09 of the North Dakota Century Code are amended and reenacted as follows:

1. Any hearing officer may issue subpoenas, discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or any other motion relating to subpoenas, discovery, or protective orders must be made to the hearing officer. The hearing officer's rulings on these motions may be appealed under section 28-32-15 after issuance of the final order by the agency.
7. Subpoenas, discovery orders, protective orders, and other orders issued under this section may be enforced by applying to any judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure of a witness or other person to comply with the order of the district court is contempt of court which is punishable by the district court, upon application. The judge may award attorney's fees to the parties seeking enforcement of a subpoena under this subsection.

Approved March 10, 1995

Filed March 13, 1995

## CHAPTER 315

### HOUSE BILL NO. 1280

(Representative Payne)

## CITY BOARD OF ADJUSTMENT APPEALS

AN ACT to amend and reenact section 28-34-01 and subsection 2 of section 40-47-11 of the North Dakota Century Code, relating to appeals of decisions of the governing body of a city.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 28-34-01 of the North Dakota Century Code is amended and reenacted as follows:

**28-34-01. Appeals from local governing bodies - Procedures.** This section, to the extent that it is not inconsistent with procedural rules adopted by the North Dakota supreme court, governs any appeal provided by statute from the decision of a local governing body, except those court reviews provided under sections 2-04-11; ~~40-47-11~~, and 40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board, commission, resource or conservation district, or other political subdivision. Each appeal is governed by the following procedure:

1. The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body. A copy of the notice of appeal must be served on the local governing body in the manner provided by rule 4 of the North Dakota Rules of Civil Procedure.
2. The appellee shall prepare and file a single copy of the record on appeal with the court. Within thirty days, or such longer time as the court by order may direct, after the notice of appeal has been filed in the court, and after the deposit by the appellant of the estimated cost of a transcript of the evidence, the local governing body shall prepare and file in the office of the clerk of the court in which the appeal is pending the original or a certified copy of the entire proceedings before the local governing body, or such abstract of the record as may be agreed upon and stipulated by the parties, including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact submitted to the local governing body, and the decision of the local governing body in the proceedings. If the notice of appeal specifies that no exception or objection is made to the local governing body's findings of fact, and that the appeal is concerned only with the local governing body's conclusions based on the facts found by it, the evidence submitted at the hearing before the local governing body must be omitted from the record filed in the court. The court may permit amendments or additions to the record to complete the record.
3. If the court determines on its own motion or if an application for leave to adduce additional evidence is made to the court in which an appeal from a determination from a local governing body is pending, and it is shown to the satisfaction of the court that such additional evidence is

material and that there are reasonable grounds for the failure to adduce such evidence in the hearing or proceeding had before the local governing body, or that such evidence is material to the issues involved and was rejected or excluded by the local governing body, the court may order that such additional evidence be taken, heard, and considered by the local governing body on such terms and conditions as the court may determine. After considering the additional evidence, the local governing body may amend or modify its decision, and shall file with the court a transcript of the additional evidence together with its new or modified decision, if any.

**SECTION 2. AMENDMENT.** Subsection 2 of section 40-47-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A decision of the governing body of the city on an appeal from a decision of the board of adjustment is ~~subject to review by certiorari. The application for a writ of certiorari shall~~ may be made appealed to the district court of the county in which the city is situated ~~within fifteen days after notice of the decision of the governing body of the city. The writ is returnable within twenty days after the rendition of the decision. The court may take evidence as may be required to determine the questions presented. The supreme court, upon application filed within fifteen days after the determination of the district court, shall review the action of the district court by certiorari~~ manner provided in section 28-34-01.

Approved March 6, 1995  
Filed March 6, 1995



# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 316

### SENATE BILL NO. 2120

(Judiciary Committee)

(At the request of the Supreme Court)

## MISDEMEANOR PROSECUTION

AN ACT to amend and reenact section 29-01-01 of the North Dakota Century Code, relating to prosecution of crimes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 29-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**29-01-01. How crimes prosecuted - Exceptions.** Every public offense must be prosecuted by information or indictment unless it is one in which:

1. A proceeding is had for the removal of a civil officer of the state or an officer of some political subdivision thereof;
2. There is a breach of military discipline arising in the militia, when in actual service, and in the land and naval forces in time of war or public danger, or which this state may keep, with the consent of Congress, in time of peace; ~~or~~
3. The offense is a misdemeanor or an infraction; or
4. Trial may be had in municipal court.

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

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 317****SENATE BILL NO. 2369**

(Senators Nalewaja, C. Nelson)  
(Representatives Koppelman, Mahoney)

**CRIMINAL CASE RECIPROCAL DISCOVERY**

AN ACT to create and enact a new section to chapter 29-01 of the North Dakota Century Code, relating to reciprocal discovery in criminal cases.

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

**SECTION 1.** A new section to chapter 29-01 of the North Dakota Century Code is created and enacted as follows:

**Defendant required to disclose information to prosecuting attorney.**

1. Upon the prosecuting attorney's compliance with a written request of the defendant for disclosure under subparagraph C or D of paragraph 1 of subdivision a of rule 16 or subdivision f of rule 16 of the North Dakota Rules of Criminal Procedure, the defendant, upon written request by the prosecuting attorney, shall reciprocate in kind and disclose to the prosecuting attorney:
  - a. The names and addresses of persons, other than the defendant, the defendant's attorney intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons that the defendant intends to offer in evidence at the trial.
  - b. Any real evidence that the defendant intends to offer in evidence at the trial.
2. Upon a showing that the prosecution has complied with the discovery procedure provided in rule 16 of the North Dakota Rules of Criminal Procedure, a court may make any order necessary to enforce the provisions of this section, including immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure.
3. The court may prohibit the testimony of a witness pursuant to subsection 2 only if all other sanctions have been exhausted.

Approved March 28, 1995  
Filed March 28, 1995

## CHAPTER 318

**SENATE BILL NO. 2116**

**(Judiciary Committee)**

(At the request of the Supreme Court)

## TRAFFIC VIOLATIONS, CITATIONS, AND BOND FORFEITURES

AN ACT to amend and reenact sections 29-05-31, 39-06.1-02, subsection 1 of section 39-06.1-03, sections 39-07-07, and 39-07-08 of the North Dakota Century Code, relating to uniform traffic citations, bond forfeitures, and procedures for disposition of noncriminal traffic violations.

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

**SECTION 1. AMENDMENT.** Section 29-05-31 of the North Dakota Century Code is amended and reenacted as follows:

**29-05-31. Uniform traffic complaint and summons.** There is hereby established a uniform complaint and summons ~~which~~ that may be used in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles. Whenever the complaint and summons established by this section is used, the provisions of rule 5 of the North Dakota Rules of Criminal Procedure relating to arrests without warrants do not apply, and ~~the~~ magistrates or state's attorneys are not required to make another complaint of the offense charged in the uniform complaint and summons. The uniform complaint and summons ~~established herein~~ must be in substantially the following form:

State of North Dakota     )                     In \_\_\_\_\_ Court,  
                                  )ss  
County of \_\_\_\_\_)                     Before Hon. \_\_\_\_\_;  
The undersigned, being duly sworn, upon his oath deposes and says  
that, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

First Name      Middle Name      Last Name      Street      City      State

did unlawfully operate a motor vehicle upon a public highway,  
namely \_\_\_\_\_, \_\_\_\_\_ N E S W of \_\_\_\_\_ and did then  
                Location                                  City

and there commit the following offense: \_\_\_\_\_  
MPH in \_\_\_\_\_  
MPH Zone \_\_\_\_\_

All in violation of the Sec. \_\_\_\_\_ of the N.D. Century Code as amended and against the peace and dignity of the state of N.D.

Officer \_\_\_\_\_ LET A WARRANT ISSUE HEREIN Sworn to and  
subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

## Judge

State's Attorney

### DESCRIPTION OF DEFENDANT AND VEHICLE

Mo. \_\_\_\_ Day \_\_\_\_ Yr. \_\_\_\_ Race \_\_\_\_ Sex \_\_\_\_ Wt. \_\_\_\_ Ht. \_\_\_\_  
 Birth date \_\_\_\_  
 Hair \_\_\_\_ Dr. Lic: State \_\_\_\_ No. \_\_\_\_ Motor Vehicle: \_\_\_\_  
 PSC \_\_\_\_  
 Make \_\_\_\_ Reg. No. \_\_\_\_ State \_\_\_\_ Year \_\_\_\_ ICC No. \_\_\_\_

### CLAIMED CONDITIONS OF THE VIOLATION

#### SLIPPERY SURFACE

\_\_\_\_ Rain \_\_\_\_ Snow \_\_\_\_ Ice

#### DARKNESS

\_\_\_\_ Night \_\_\_\_ Fog \_\_\_\_ Snow

#### OTHER TRAFFIC PRESENT

\_\_\_\_ Cross \_\_\_\_ Oncoming \_\_\_\_ Pedestrian

\_\_\_\_ Same direction

#### IN ACCIDENT

\_\_\_\_ Ped. \_\_\_\_ Vehicle \_\_\_\_ Intersection

\_\_\_\_ Right angle \_\_\_\_ Head on \_\_\_\_ Rear end

\_\_\_\_ Ran off road \_\_\_\_ Other

Area: \_\_\_\_ School \_\_\_\_ Rural \_\_\_\_ Business

\_\_\_\_ Industrial \_\_\_\_ Residential

Highway: \_\_\_\_ 2 Lane \_\_\_\_ 4 Lane \_\_\_\_ 4 Lane Divided

Type

\_\_\_\_ Gravel \_\_\_\_ Dirt

#### OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT

\_\_\_\_ Yes \_\_\_\_ No

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT

### (CITY ORDINANCE OR STATE CRIMINAL TRAFFIC VIOLATION)

You are hereby summoned to appear at the time and place designated below to answer to the charge above indicated to be made against you

#### Appearance

Before: Municipal Judge-~~County~~ District Ct. \_\_\_\_\_

\_\_\_\_ A.M./P.M.

Location

Month

Day

Year

Time

Dated this

\_\_\_\_ day of

19

Officer

### PROMISE TO APPEAR

I hereby consent and promise to appear at the time and place specified in the above summons, the receipt of a copy of which is hereby acknowledged, and I expressly waive earlier hearing.

Dated this \_\_\_\_ day of \_\_\_\_ 19 \_\_\_\_

Defendant \_\_\_\_\_

### (STATE NONCRIMINAL TRAFFIC VIOLATION)

You are hereby notified of your right to request, within fourteen days of the date of this citation, a hearing concerning the alleged traffic violation. If you do not request a hearing, the bond is deemed forfeited and the violation admitted. If you are requesting a hearing, date and sign the following portion of this citation AND INCLUDE THE BOND NOTED ON THIS CITATION for the alleged violation. Failure to do so may result in the suspension of your operator's license. You will be notified of the hearing date by the court for the county in which this citation was issued.

### REQUEST FOR HEARING

I hereby submit the designated bond and request a hearing on the alleged traffic violation and promise to appear at the time and date specified in the summons issued by the court for the county in which the citation was issued.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_  
Defendant \_\_\_\_\_

**SECTION 2. AMENDMENT.** Section 39-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-02. Traffic violations noncriminal - Exceptions - Procedures.** Any person cited, in accordance with ~~the provisions of~~ sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in section 39-06.1-05, ~~shall be~~ is deemed to be charged with a noncriminal offense ~~and.~~ The person may appear before the designated official and pay the statutory fee for the violation charged at or prior to before the time scheduled for a hearing; or, if he. If the person has posted bond in person; as provided by section 39-07-07; or by mail, he the person may forfeit bond by not appearing at the designated time. If the person appears is cited for a traffic violation under state law and posts bond by mail, the bond must be submitted within fourteen days of the date of the citation. When posting bond by mail, the person cited shall indicate on the envelope or citation whether a hearing is requested. If the person does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the violation admitted. If the person requests a hearing, the court for the county in which the citation is issued shall issue a summons to the person requesting the hearing notifying the person of the date of the hearing before the designated official in accordance with section 39-06.1-03. Upon appearing at the time hearing scheduled in the citation or otherwise scheduled at the person's request, he the person may make a statement in explanation of his the person's action; and the. The official may at that time, in his discretion, waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, he shall be the person is deemed to have admitted the violation and to have waived his the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the official designated in the citation must be identical to the statutory fee established by section 39-06.1-06. Within ten days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

1. Admission of the violation; and
2. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles [14.48 kilometers] per hour and the miles [kilometers] per hour by which the speed limit was exceeded.

This section ~~may not be construed as allowing~~ does not allow a halting officer to receive the statutory fee or bond, unless ~~he~~ the officer is otherwise authorized by law to do so.

<sup>174</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 39-06.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~If a~~ A person cited for a traffic violation, other than an offense listed in section 39-06.1-05, who does not ~~choose to~~ follow one of the procedures set forth in section 39-06.1-02, he may request a hearing on the issue of ~~his~~ commission of the violation charged; ~~the~~. The hearing to must be held at the time scheduled in the citation, at the time scheduled in response to the person's request, or at some future time, not to exceed ninety days later, set at that first appearance.

**SECTION 4. AMENDMENT.** Section 39-07-07 of the North Dakota Century Code is amended and reenacted as follows:

**39-07-07. Halting person for violating traffic regulations - Duty of officer halting.** Whenever any person is halted for the violation of any of the provisions of chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting that person, except as otherwise provided in section 39-07-09 and section 39-20-03.1 or 39-20-03.2, may:

1. Take the name and address of the person;
2. Take the license number of the person's motor vehicle; and
3. ~~Issue~~ If a city ordinance or state criminal traffic violation, issue a summons or otherwise notify that person in writing to appear at a time and place to be specified in the summons or notice or, if a state noncriminal traffic violation, notify the person of the right to request a hearing when posting bond by mail.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

**SECTION 5. AMENDMENT.** Section 39-07-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>174</sup> Section 39-06.1-03 was also amended by section 1 of Senate Bill No. 2048, chapter 375.

**39-07-08. Hearing - Time - Promise of defendant to appear - Failure to appear - Penalty.** The time to be specified in the summons or notice provided for in section 39-07-07 must be within thirty-five days after the issuance of the summons or notice or earlier if so ordered by the magistrate of the city or county having jurisdiction over the offense or if the person halted demands an earlier hearing; ~~and, if.~~ If the person halted desires, the person may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four hours. The hearing must be before a magistrate of the city or county in which the offense was committed. If an immediate hearing is demanded, a ~~county district~~ judge serving ~~more than one~~ the county, ~~may,~~ with the consent of the respective prosecuting attorneys, may order the hearing to be held in any of the counties in which the ~~county district~~ judge has jurisdiction, rather than in the county where the offense was allegedly committed. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, the officer shall release the person from custody. Any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

Approved March 10, 1995

Filed March 10, 1995

**CHAPTER 319****HOUSE BILL NO. 1244**

(Representatives Martinson, Bateman, Byerly, Carlisle, DeWitz)

**ARREST AND SEARCH WARRANT INFORMATION  
RELEASE**

AN ACT to create and enact a new section to chapter 29-05 and a new section to chapter 29-29 of the North Dakota Century Code, relating to the release of information contained in arrest and search warrants.

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

**SECTION 1.** A new section to chapter 29-05 of the North Dakota Century Code is created and enacted as follows:

**Release of information contained in complaint or warrant.** The magistrate who issues a warrant for arrest shall order the information in the complaint and warrant confidential, if the law enforcement officer articulates a reason for the confidentiality that convinces the issuing magistrate that limited confidentiality is necessary for the safety of the law enforcement officer or to enable the warrant to be properly served. The magistrate shall limit the duration of the order to the time of the arrest of the accused and shall exempt law enforcement officers in the performance of official duties.

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

**Release of information contained in complaint or warrant.** The magistrate who issues a search warrant shall order the information in the complaint and warrant confidential, if the law enforcement officer articulates a reason for the confidentiality that convinces the issuing magistrate that limited confidentiality is necessary for the safety of the law enforcement officer or to enable the warrant to be properly served. The magistrate shall limit the duration of the order to the time of the arrest of the accused and shall exempt law enforcement officers in the performance of official duties.

Approved March 14, 1995

Filed March 14, 1995



## **CHAPTER 320**

### **SENATE BILL NO. 2346** (Senators Watne, C. Nelson, Traynor) (Representative Timm)

## **ADMISSIBILITY OF CONFESSIONS**

**AN ACT** to repeal section 29-21-12.1 of the North Dakota Century Code, relating to the admissibility of confessions.

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

**SECTION 1. REPEAL.** Section 29-21-12.1 of the North Dakota Century Code is repealed.

Approved March 1, 1995

Filed March 2, 1995

## CHAPTER 321

### HOUSE BILL NO. 1131

(Political Subdivisions Committee)

(At the request of the Office of Management and Budget)

## CRIMINAL FINES IMPOSITION AND DISPOSITION

AN ACT to amend and reenact sections 29-26-22, 29-26-22.2, and 29-27-02.1 of the North Dakota Century Code, relating to imposition and disposition of fines and fees for violation of state law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

**29-26-22. Judgment for fines, costs, and court administration fee - Statement to be filed by court - Docketing and enforcement.** In all criminal cases of conviction upon a plea or finding of guilt, a court administration fee of up to ~~twenty-five~~ thirty percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. ~~When a fine is imposed and suspended or the imposition of a sentence is deferred under subsection 4 of section 12-1-32-02, the court administration fee may be taxed against the defendant and twenty-five percent of the fee collected must be added to the fund for the maintenance of common schools pursuant to section 2 of article IX of the Constitution of North Dakota. District court costs, administration fees, and forfeitures must be deposited in the state general fund.~~ A judgment that the defendant pay a fine, costs, or court administration fee, or any combination thereof, may be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed costs or administrative fee in installments. When a defendant is assessed costs or administrative fees, the court may not impose at the same time an alternative sentence to be served if the costs are not paid.

**SECTION 2. AMENDMENT.** Section 29-26-22.2 of the North Dakota Century Code is amended and reenacted as follows:

**29-26-22.2. Authority to compromise judgment by county commissioners.** The board of county commissioners has authority to compromise and settle any judgment for fines or costs payable to the county treasury after a lapse of two years from the filing thereof, if in the opinion of said board said judgment cannot be collected in full. Upon receipt of a certified copy of the board's action, the state's attorney of said county shall in accordance therewith make and file a partial or total satisfaction of said judgment as attorney for the county.

**SECTION 3. AMENDMENT.** Section 29-27-02.1 of the North Dakota Century Code is amended and reenacted as follows:

29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and bond forfeitures. ~~All~~ Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the ~~treasurer of the county whose officers originally instituted the action and credited to the general fund of the county. In the event that the attorney general of the state of North Dakota originally instituted the action, the bail bond, money, or other property forfeited must be paid over to the proper state official and credited to the state school~~ general fund.

Approved April 11, 1995

Filed April 12, 1995

# UNIFORM PROBATE CODE

## CHAPTER 322

### HOUSE BILL NO. 1111

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

## UNIFORM PROBATE CODE CHANGES

AN ACT to create and enact section 30.1-05-08 of the North Dakota Century Code, relating to protection of payers and other third parties under the Uniform Probate Code; to amend and reenact sections 30.1-12-02, 30.1-12-08, 30.1-15-12, 30.1-22-01, and 30.1-22-02 of the North Dakota Century Code, relating to the provisions of the Uniform Probate Code Article III which pertain to general provisions of probate of wills and administration; to amend and reenact subsections 4, 5, and 53 of section 30.1-01-06, chapter 30.1-05, section 30.1-06-01, subsection 3 of section 30.1-06-02, subsection 2 of section 30.1-07-03, sections 30.1-09-05, 30.1-09-07, 30.1-09-08, 30.1-09-10, 30.1-09.1-02, subdivision b of subsection 1 and subdivision b of subsection 2 of section 30.1-09.1-06, sections 30.1-09.1-07, 30.1-09.1-09, 30.1-09.1-11, subsection 4 of section 30.1-10-01, subsections 5, 8, and 9 of section 30.1-10-03, and subsections 4, 7, and 8 of section 30.1-10-04 of the North Dakota Century Code as amended or created by sections 2, 15, 16, 20, 31, 33, 34, 36, 39, and 40 of chapter 334 of the 1993 Session Laws, relating to the provisions of the Uniform Probate Code Articles I and II which pertain to definitions, augmented estate, elective share, entitlement of spouse, requirement of survival, nonademption, power of appointment, and probate and nonprobate transfers; to amend and reenact section 51 of chapter 334 of the 1993 Session Laws, relating to the effective date of amendments to the Uniform Probate Code; to repeal section 30.1-04-06 of the North Dakota Century Code, relating to representation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 4 of section 30.1-01-06 of the North Dakota Century Code as amended by section 2 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

4. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an ~~insurance or annuity policy~~, of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or of a ~~pension, profit-sharing, retirement, or similar benefit plan~~, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, ~~appointee, or taker in default of a~~

~~power of appointment; or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.~~

**SECTION 2. AMENDMENT.** Subsections 5 and 53 of section 30.1-01-06 of the North Dakota Century Code as created by section 2 of chapter 334 of the 1993 Session Laws are amended and reenacted as follows:

5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an ~~insurance annuity policy, of an account with payable on death designation, of a security registered in beneficiary form transferable on death, or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.~~
53. "Survive"; ~~except for purposes of sections 30.1-31-21 through 30.1-31-30;~~ means that an individual has neither predeceased an event, including the death of another individual, nor predeceased an event under sections 30.1-04-04 and 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

**SECTION 3. AMENDMENT.** Chapter 30.1-05 of the North Dakota Century Code as created by section 15 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-05-01. (2-201) Elective share.**

1. The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this chapter, to take an ~~elective share amount equal to the value of the elective share percentage~~ elective share of one-half of the augmented estate; ~~determined by the length of time the spouse and the decedent were married to each other; in accordance with the following schedule:~~

<del>If the decedent and the spouse were married to each other:</del>	<del>The elective share percentage is:</del>
<del>Less than 1 year</del>	<del>Supplemental amount only</del>
<del>1 year but less than 2 years</del>	<del>3% of the augmented estate</del>
<del>2 years but less than 3 years</del>	<del>6% of the augmented estate</del>
<del>3 years but less than 4 years</del>	<del>9% of the augmented estate</del>
<del>4 years but less than 5 years</del>	<del>12% of the augmented estate</del>
<del>5 years but less than 6 years</del>	<del>15% of the augmented estate</del>
<del>6 years but less than 7 years</del>	<del>18% of the augmented estate</del>
<del>7 years but less than 8 years</del>	<del>21% of the augmented estate</del>
<del>8 years but less than 9 years</del>	<del>24% of the augmented estate</del>
<del>9 years but less than 10 years</del>	<del>27% of the augmented estate</del>
<del>10 years but less than 11 years</del>	<del>30% of the augmented estate</del>
<del>11 years but less than 12 years</del>	<del>34% of the augmented estate</del>
<del>12 years but less than 13 years</del>	<del>38% of the augmented estate</del>
<del>13 years but less than 14 years</del>	<del>42% of the augmented estate</del>
<del>14 years but less than 15 years</del>	<del>46% of the augmented estate</del>
<del>15 years or more</del>	<del>50% of the augmented estate.</del>

2. If the sum of the amounts described in ~~subdivisions e and subdivision d~~ of subsection 2 of section 30.1-05-02, ~~subdivisions~~ subdivision a and e of subsection 1 of section ~~30.1-05-07~~ 30.1-05-03, and that part of the elective-share amount payable from the decedent's probate estate and

~~reclaimable estates~~ nonprobate transfers to others under subsections 2 and 3 of section ~~30.1-05-07~~ 30.1-05-03 is less than fifty thousand dollars, the surviving spouse is entitled to a supplemental elective-share amount equal to fifty thousand dollars minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to others in the order of priority set forth in subsections 2 and 3 of section ~~30.1-05-07~~ 30.1-05-03.

3. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.
4. The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

### 30.1-05-02. (2-202) Augmented estate.

1. a. In this section:

- (1) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim. Any recorded instrument on which a state documentary fee is noted is prima facie evidence that the transfer described therein was made to a bona fide purchaser. "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, that are included in the augmented estate under subdivision b of subsection 2.
- (2) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.
- (3) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.
- ~~(2)~~ (4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.
- (5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

- (3) (6) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the, whether or not the decedent then had the capacity to exercise the power, held a power could have created an to create a present or future interest; present or future, in the decedent or, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate, and includes a power to revoke or invade the principle of a trust or other property arrangement.
- (4) (7) "Probate estate" means property, whether movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.
- (8) "Property" includes values subject to a beneficiary designation.
- (5) (9) "Right to income" includes a right to payments under an a commercial or private annuity, an annuity trust, a unitrust, or a similar contractual arrangement.
- (6) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.
- (10) "Transfer", as it relates to a transfer by or of the decedent, includes:
- (a) An exercise or release of a presently exercisable general power of appointment held by the decedent;
  - (b) A lapse at death of a presently exercisable general power of appointment held by the decedent; and
  - (c) An exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in subparagraph b of paragraph 2 of subdivision b of subsection 2 that the decedent conferred on a nonadverse party.
- b. In paragraphs 3 and 4 of subdivision b of subsection 2, a "transfer" includes an exercise or release of a power of appointment; but does not include a lapse of a power of appointment subparagraph a of paragraph 3 of subdivision b of subsection 2, "termination", with respect to a right or interest in property, means that the right or interest terminated by the terms of the governing instrument or that the decedent transferred or relinquished the right or interests; and, with respect to a power over property, means that the power terminated by exercise, release, lapse, in default, or otherwise,

except that, with respect to a power described in subparagraph a of paragraph 1 of subdivision b of subsection 2, "termination" means that the power terminated by exercise or release, but not by lapse nor in default or otherwise.

2. The augmented estate consists of the sum of:

- a. The value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance as defined in section 47-18-01, family allowances ~~and exemptions~~, exempt property, and enforceable claims.
- b. The value of the decedent's ~~reclaimable estate~~ nonprobate transfers to others, which ~~is~~ are composed of all property, whether movable or immovable, wherever situated, not including in the decedent's probate estate, of any of the following types:

(1) Property to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to of any of the following types that passed outside probate at the decedent's death:

(a) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment held by the decedent alone; if the decedent held that power immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate; spouse; or surviving spouse created by the decedent during the marriage; the amount included is the value of the property subject to the power, to the extent that the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

~~(2)~~ (b) Property, to the extent of the decedent's unilaterally severable interest therein The decedent's fractional interest in property, held by the decedent and any other person; except in joint tenancy with the right of survivorship; the amount included is the value of the decedent's fractional interest contributed by the decedent during the marriage, to the extent that that fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse; with right of survivorship; if the decedent held that interest immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, transferred that interest to any person other than the decedent's surviving spouse.



- (2) Proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse; if the decedent owned the insurance policy; had the power to change the beneficiary of the insurance policy; or the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse.
- (c) The decedent's ownership interest in property or accounts held in POD, TOD, or coownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.
- (4) (2) Property transferred in any of the following forms by the decedent to any person other than a bona fide purchaser at any time during the decedent's marriage to the surviving spouse; to or for the benefit of any person; other than the decedent's surviving spouse; if the transfer is of any of the following types:
- (a) Any irrevocable transfer to the extent that in which the decedent retained at the time of or during the two-year period next preceding death the right to the possession or enjoyment of, or right to the income from, the property if and to the extent that the decedent's right terminated at or continued beyond the decedent's death; the amount included is the value of the fraction of the property to which the decedent's right related, to the extent that that fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.
- (b) Any transfer to the extent that, at the time of or during the two-year period next preceding the decedent's death, in which the decedent created a power over the income or principal was subject to a power of the transferred property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, for the benefit of the decedent or, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the property subject to the power, to the extent that the power was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent that the property subject to the power passed at the decedent's death, by exercise, release, lapse, in default, or

otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

- (3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:
- (a) Any property that passed as a result of termination of a right or interest in, or power over, property that would have been included in the augmented estate under subparagraph a, b, or c of paragraph 1 of this subdivision, or under paragraph 2 of this subdivision, if the right, interest, or power had not terminated until the decedent's death; the amount included is the value of the property that would have been included under these subsections, except that the property is valued at the time that the right, interest, or power terminated, and is included only to the extent that the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse.
  - (e) Any transfer of property, to the extent the decedent's contribution to it, as a percentage of the whole, was made during the two-year period next preceding the decedent's death, by which the property is held, at the time of or during the two-year period preceding the decedent's death, by the decedent and another, other than the decedent's surviving spouse, with right of survivorship.
  - ~~(d)~~ (b) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a donee during the two-year period next preceding the decedent's death person other than the decedent's surviving spouse; the amount included is the value of the transferred property to the extent that the aggregate transfers to any one donee in either of the two years ~~exceed~~ exceeded ten thousand dollars.
- c. The value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are composed of all property that passed outside probate at the decedent's death from the decedent to which the surviving spouse succeeds by reason of the decedent's death (other than by homestead allowance, exempt property, family allowance, testate succession, or intestate succession), including the proceeds of insurance (including accidental death benefits) on the life of the decedent and benefits payable under a retirement plan in which the decedent was a participant, exclusive of:
- (1) The decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

- (2) The decedent's ownership interest in property or accounts held in coownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving coowner;
  - (3) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death; and
  - (4) All other property that would have been included in the augmented estate under paragraph 1 or 2 of subdivision b of this subsection had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding property passing to the surviving spouse under the federal social security system.
- d. The Except to the extent included in the augmented estate under subdivision a or c, the value of property:
- (1) That was owned by the decedent's surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that including:
    - (a) The surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;
    - (b) The surviving spouse's ownership interest in property or accounts held in coownership registration with the right of survivorship; and
    - (c) Property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system.
  - (2) That would have been includable included in the surviving spouse's reclaimable estate nonprobate transfers to others, other than the spouse's fractional and ownership interest included under subparagraphs a and b of paragraph 1, had the spouse predeceased been the decedent. But amounts that would have been includable in the surviving spouse's reclaimable estate under paragraph 3 of subdivision b of subsection 2 are not valued as if the spouse were deceased. Property included under this paragraph is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, except that, for purposes of subparagraphs a and b of paragraph 1, the values of the spouse's fractional and ownership interests are determined

immediately before the decedent's death if the decedent was then a joint tenant or a coowner of the property or accounts. The value of property included under this paragraph is reduced in each category by enforceable claims against the included property and is reduced by enforceable claims against the surviving spouse.

3. Any transfer or exercise or release of a power of appointment The value of any property is excluded from the decedent's reclaimable estate nonprobate transfers to others to the extent the decedent received adequate and full consideration in money or money's worth for the a transfer; exercise, or release of the property or if irrevocably made the property was transferred with the written consent or joinder of, or if the transfer was consented to in writing by, the surviving spouse. Life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate are also excluded from the decedent's nonprobate transfers.
4. Property is valued as of the decedent's death, but property irrevocably transferred during the two-year period next preceding the decedent's death which is included in the decedent's reclaimable estate under paragraphs 1, 2, and 4 of subdivision b of subsection 2 is valued as of the time of the transfer. If the terms of more than one The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.
5. In case of overlapping application to the same property of the paragraphs or subparagraphs of subdivision b of subsection 2 apply, the property is included in the augmented estate under the paragraph or subparagraph that yields provision yielding the highest value, but under any one, but only one, of the overlapping provisions if they all yield the same value. For the purposes of this section, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of appointment.
5. a. Although under this section a payment, item of property, or other benefit is included in the decedent's reclaimable estate, a payer or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payer or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payer or other third party is liable for payments made or other actions taken after the payer or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

- b. The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payer's or other third-party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under subsection 4 of section 30.1-05-05, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under subsection 1 of section 30.1-05-05, or, if filed, the demand for an elective share is withdrawn under subsection 3 of section 30.1-05-05, the court shall order disbursement to the designated beneficiary. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
  - e. Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.
6. a. A person who purchases property from a recipient for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit nor liable under this chapter for the amount of that payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in section 30.1-14-07.
- b. If any section or part of any section of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or any other benefit, is obligated to return that payment, item of property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section 30.1-05-07, to the person who would have been entitled to it were that section or part of that section not preempted.

**30.1-05-03. (2-203) Right of election personal to surviving spouse Sources from which elective share payable.**

- 1. The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under

subsection 1 of section 30.1-05-05. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

2. If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court must set aside that portion of the elective share and supplemental elective share amounts due from the decedent's probate estate and recipients of the decedent's reclaimable estate under subsections 2 and 3 of section 30.1-05-07 and must appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee must administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:
  - a. Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need.
  - b. During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust, but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination.
  - c. Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order: under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken; as if that predeceased spouse died immediately after the surviving spouse; or to that predeceased spouse's heirs under section 30.1-09.1-11.
1. In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:
  - a. Amounts included in the augmented estate under subdivision a of subsection 2 of section 30.1-05-02 which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under subdivision c of subsection 2 of section 30.1-05-02; and
  - b. Amounts included in the augmented estate under subdivision d of subsection 2 of section 30.1-05-02.

2. If, after the application of subsection 1, the elective-share amount is not fully satisfied or if the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included under subparagraph a or b of paragraph 3 of subdivision b of subsection 2 of section 30.1-05-02, are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.
3. If, after the application of subsections 1 and 2, the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

**30.1-05-04. (2-204) Waiver of right to elect and of other rights Personal liability of recipients.**

1. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.
2. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:
  - a. The waiver, if given effect, would reduce the assets or income available to the surviving spouse to an amount less than those allowed for persons eligible for a program of public assistance;
  - b. The surviving spouse did not execute the waiver voluntarily; or
  - c. The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:
    - (1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;
    - (2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided;
    - (3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

3. An issue of unconscionability of a waiver is for decision by the court as a matter of law.
  4. Unless it provides to the contrary, a waiver of "all rights" or equivalent language in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to the person from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.
1. Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the person is liable.
  2. If any section or part of any section of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or any other benefit, is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section 30.1-05-03, to the person who would have been entitled to it were that section or part of that section not preempted.

#### 30.1-05-05. (2-205) Proceeding for elective share - Time limit.

1. Except as provided in subsection 2, the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall serve a copy of the petition for the elective share on, and shall give written notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will may be adversely affected by the taking of the elective share. Except as provided in subsection 2, the decedent's reclaimable estate nonprobate transfers to others, described in subdivision b of subsection 2 of section 30.1-05-02, is not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.
2. Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate nonprobate transfers to others, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the



spouse's petition for an extension, the decedent's ~~reclaimable estate nonprobate transfers to others~~, described in subdivision b of subsection 2 of section 30.1-05-02, is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

3. The surviving spouse may withdraw a demand for an elective share at any time before entry of a final determination by the court.
4. After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under ~~section 30.1-05-07~~ sections 30.1-05-03 and 30.1-05-04. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under ~~section 30.1-05-07~~ sections 30.1-05-03 and 30.1-05-04, had relief been secured against all persons subject to contribution.
5. An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.
6. A copy of the order or judgment of the court shall be forwarded immediately to the tax commissioner by the court.

**30.1-05-06. (2-206) Effect of election on statutory benefits** Right of election personal to surviving spouse - Incapacitated surviving spouse. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective share and supplemental elective-share amounts.

1. The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under subsection 1 of section 30.1-05-05. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.
2. If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under subsections 2 and 3 of section 30.1-05-03 and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an

incapacitated person. The trustee shall administer the trust in accordance with the following terms and any additional terms as the court determines appropriate:

- a. Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need.
- b. During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination.
- c. Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order: under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or to that predeceased spouse's heirs under section 30.1-09.1-11.

**30.1-05-07. (2-207) Charging spouse with owned assets and gifts received - Liability of others for balance of elective share Waiver of right to elect and of other rights.**

1. In a proceeding for an elective share, the following are applied first to satisfy the elective share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's reclaimable estate:
  - a. Amounts included in the augmented estate which pass or have passed to the surviving spouse by testate or intestate succession;
  - b. Amounts included in the augmented estate under subdivision c of subsection 2 of section 30.1-05-02;
  - c. Amounts included in the augmented estate which would have passed to the spouse but were disclaimed;
  - d. Amounts included in the augmented estate under subdivision d of subsection 2 of section 30.1-05-02 up to the applicable percentage thereof. For the purposes of this subdivision, the "applicable percentage" is twice the elective share percentage set forth in the schedule in subsection 1 of section 30.1-05-01 appropriate to the length of time the spouse and the decedent were married to each other.
2. If, after the application of subsection 1, the elective share amount is not fully satisfied or if the surviving spouse is entitled to a supplemental elective share amount, amounts included in the decedent's probate estate

and that portion of the decedent's reclaimable estate other than amounts irrevocably transferred within two years before the decedent's death are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's reclaimable estate are so applied that liability for the unsatisfied balance of the elective share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

3. If, after the application of subsections 1 and 2, the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's reclaimable estate is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.
  4. Only original recipients of the reclaimable estate described in subdivision b of subsection 2 of section 30-1-05-02, and the donees of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the reclaimable estate or to pay the value of the amount for which the person is liable.
1. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.
  2. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:
    - a. The waiver, if given effect, would reduce the assets or income available to the surviving spouse to an amount less than those allowed for persons eligible for medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need;
    - b. The surviving spouse did not execute the waiver voluntarily; or
    - c. The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:
      - (1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;
      - (2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

- (3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.
3. An issue of unconscionability of a waiver is for decision by the court as a matter of law.
4. Unless it provides to the contrary, a waiver of "all rights" or equivalent language in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to the person from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

SECTION 4. Section 30.1-05-08 of the North Dakota Century Code is created and enacted as follows:

30.1-05-08. (2-208) Protection of payers and other third parties.

1. Although under section 30.1-05-02 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payer or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payer or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payer or other third party is liable only for actions taken two or more business days after the payer or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection 2 is not sufficient to impose liability on a payer or other third party for actions taken pursuant to the governing instrument.
2. The written notice must be mailed to the payer's or other third-party's main office or home by registered mail or served upon the payer or third party in the same manner as a summons in a civil action. Notice to a sales representative of the payer or other third party does not constitute notice to the payer or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the

decedent's residence. The availability of an action under this section does not prevent the payer or other third party from taking any other action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for any such payment, transfer, or deposit with the court, even if no probate proceedings have been commenced before the payment, transfer, or deposit. The court shall hold the funds or items of property and, upon its determination under subsection 4 of section 30.1-05-05, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under subsection 1 of section 30.1-05-05, or, if filed, the demand for an elective share is withdrawn under subsection 3 of section 30.1-05-05, the court shall order disbursement to the designated beneficiary. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

3. Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

**SECTION 5. AMENDMENT.** Section 30.1-06-01 of the North Dakota Century Code as created by section 16 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-06-01. (2-301) Entitlement of spouse - Premarital will.**

1. If the testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under section 30.1-09-05 or 30.1-09-06 to such a child or to a descendant of such a child, unless:
  - a. It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;
  - b. The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or
  - c. The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

2. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 30.1-09-05 or 30.1-09-06 to a descendant of such a child, abate as provided in section 30.1-20-02.

**SECTION 6. AMENDMENT.** Subsection 3 of section 30.1-06-02 of the North Dakota Century Code as created by section 16 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

3. ~~Except as provided in subsection 1;~~ if If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted afterborn; or after-adopted child.

**SECTION 7. AMENDMENT.** Subsection 2 of section 30.1-07-03 of the North Dakota Century Code as created by section 20 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

2. If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under subsection 2 of section ~~30.1-05-03~~ 30.1-05-06.

**SECTION 8. AMENDMENT.** Section 30.1-09-05 of the North Dakota Century Code as amended by section 31 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-09-05. (2-603) Antilapse - Deceased devisee - Class gifts.**

**~~1. In this section:~~**

- a. ~~"Alternative devise" means that a devise that is expressly created by the will and; under the terms of the will, can take effect instead of another devise on the happening of one or more events; including survival of the testator or failure to survive the testator; whether an event is expressed in condition-precedent; condition-subsequent; or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that; upon lapse or failure; the nonresiduary devise; or nonresiduary devises in general; pass under the residuary clause.~~
- b. ~~"Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.~~
- c. ~~"Devise" includes an alternative devise; a devise in the form of a class gift; and an exercise of a power of appointment.~~
- d. ~~"Devisee" includes a class member if the devise is in the form of a class gift; an individual or class member who was deceased at the time the testator executed the will as well as an individual or class~~

member who was then living but who failed to survive the testator; and an appointee under a power of appointment exercised by the testator's will:

- e. "Stepchild" is a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment; and not of the testator.
  - f. "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator under section 30:1-99.1-02.
  - g. "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.
2. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:
- a. Except as provided in subdivision d, if a devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.
  - b. Except as provided in subdivision d, if a devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, a substitute gift is created in the deceased devisee or devisee's surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which that deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this subdivision, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.
  - c. For purposes of section 30:1-99-03, words of survivorship, such as in a devise to an individual "if the individual survives me", or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.
  - d. If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

- c. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section; whether or not the descendant is an object of the power.
3. If under subsection 2, substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other; the determination of which of the substitute gifts takes effect is resolved as follows:
- a. Except as provided in subdivision b, the devised property passes under the primary substitute gift.
  - b. If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.
  - c. In this subsection:
    - (1) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.
    - (2) "Primary substitute gift" means the substitute gift created with respect to the primary devise.
    - (3) "Younger-generation devise" means a devise that is to a descendant of a devisee of the primary devise; is an alternative devise with respect to the primary devise; is a devise for which a substitute gift is created; and would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisees or devisees of the primary devise.
    - (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise. If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if the devisee predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree, then those of more remote degree take by representation. One who would have been a devisee under a class gift if that person had survived the testator is treated as a devisee for purposes of this section where that person's death occurred before or after the execution of the will.

**SECTION 9. AMENDMENT.** Section 30.1-09-07 of the North Dakota Century Code as amended by section 33 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:



**30.1-09-07. (2-605) Increase Change in securities - Accessions - Nonademption.**

1. If a testator ~~executes a will that devises~~ intended a specific devise of certain securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types rather than the equivalent value thereof, the specific devisee is entitled only to:
  - a. Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options. As much of the devised securities as is a part of the estate at the time of the testator's death.
  - b. Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization. Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options.
  - c. Securities of the same organization acquired as a result of a plan of reinvestment. Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.
  - d. Any additional securities of the entity owned by the testator as a result of a plan of reinvestment.
2. Distributions ~~in cash~~ before death with respect to a ~~described~~ specifically devised security not provided for in subsection 1 are not part of the specific devise.

**SECTION 10. AMENDMENT.** Section 30.1-09-08 of the North Dakota Century Code as amended by section 34 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-09-08. (2-606) Nonademption of specific devises - Unpaid proceeds of sale, condemnation, or insurance - Sale by conservator ~~or agent.~~**

1. A specific devisee has the right to the specifically devised property in the testator's estate at death and:
  - a. Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property.
  - b. Any amount of a condemnation award for the taking of the property unpaid at death.
  - c. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property.

- d. Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
  - e. ~~Real or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real or tangible personal property.~~
2. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery. This subsection does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.
3. The right of a specific devisee under this subsection 2 is reduced by any right the devisee has under subsection 1.
4. ~~For the purposes of the references in subsection 2 to a conservator, subsection 2 does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.~~
5. ~~For the purposes of the references in subsection 2 to an agent acting within the authority of a durable power of attorney for an incapacitated principal, "incapacitated principal" means a principal who is an incapacitated person; no adjudication of incapacity before death is necessary; and the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.~~

**SECTION 11. AMENDMENT.** Section 30.1-09-10 of the North Dakota Century Code as amended by section 36 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-09-10. (2-608) Exercise of power of appointment.** ~~In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a A general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to does not exercise a power of appointment held by the testator only if the power is a general power and the creating instrument does not contain a gift if the power is not exercised or the testator's will manifests an unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.~~

**SECTION 12. AMENDMENT.** Section 30.1-09.1-02 of the North Dakota Century Code as created by section 39 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-09.1-02. (2-702) Requirement of survival by one hundred twenty hours.**

1. For the purposes of this title, ~~except for purposes of sections 30.1-31-21 through 30.1-31-30, and~~ except as provided in subsection 4 an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred twenty hours is deemed to have predeceased the event.
2. Except as provided in subsection 4 ~~and except for a security registered in beneficiary form under sections 30.1-31-21 through 30.1-31-30,~~ for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.
3. Except as provided in subsection 4, if it is not established by clear and convincing evidence that one of two coowners with right of survivorship survived the other coowner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours and there are more than two coowners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of coowners. For purposes of this subsection, the term "coowners with right of survivorship" includes joint tenants, tenants by the entireties, and other coowners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.
4. ~~This section does not apply~~ Survival by one hundred twenty hours is not required if:
  - a. The governing instrument contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;
  - b. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specific period or expressly requires the individual to survive the event by a specific period; but survival of the event or the specified period must be established by clear and convincing evidence;
  - c. Imposition of a one-hundred-twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under subdivision a of subsection 1, subdivision a of subsection 2, or subdivision a of subsection 3 of section 47-02-27.1, or to become invalid under subdivision b of subsection 1, subdivision b of subsection 2, or subdivision b of subsection 3 of section 47-02-27.1; but survival must be established by clear and convincing evidence; or
  - d. The application of ~~this section~~ a one-hundred-twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.

5. a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payer or other third party received written notice of a claimed lack of entitlement under this section. A payer or other third party is liable for a payment made or other action taken after the payer or other third party received written notice of a claimed lack of entitlement under this section.
  - b. Written notice of a claimed lack of entitlement under subdivision a must be mailed to the payer's or other third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
6. a. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
  - b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

**SECTION 13. AMENDMENT.** Subdivision b of subsection 1 of section 30.1-09.1-06 of the North Dakota Century Code as created by section 39 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

- b. "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes a class member if the beneficiary designation is in the form of a class gift and includes an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

**SECTION 14. AMENDMENT.** Subdivision b of subsection 2 of section 30.1-09.1-06 of the North Dakota Century Code as created by section 39 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

- b. Except as provided in subdivision d, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary ~~of beneficiaries' surviving descendants.~~ The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this subdivision, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

**SECTION 15. AMENDMENT.** Section 30.1-09.1-07 of the North Dakota Century Code as created by section 39 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-09.1-07. (2-707) Survivorship with respect to future interests under the terms of a trust - Substitute takers.**

1. In this section:

- a. "Alternative future interest" means to an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.
- b. "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

- c. "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.
  - d. "Distribution date", with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
  - e. "Future interest" includes an alternative future interest and a future interest in the form of a class gift.
  - f. "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.
  - g. "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 30.1-09.1-02.
2. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:
- a. Except as provided in subdivision d, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.
  - b. Except as provided in subdivision d, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary ~~or beneficiaries' surviving descendants~~. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

- c. For purposes of section 30.1-09.1-01, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this ~~section~~ section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.
  - d. If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.
3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:
- a. Except as provided in subdivision b, the property passes under the primary substitute gift.
  - b. If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.
  - c. In this subsection:
    - (1) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interest who left surviving descendants survived the distribution date.
    - (2) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.
    - (3) "Younger-generation future interest" means a future interest that is to a descendant of a beneficiary of the primary future interest, is an alternative future interest with respect to the primary future interest, is a future interest for which a substitute gift is created, and would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary of beneficiaries of the primary future interest.
    - (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.
4. If Except as provided in subsection 5, if, after the application of subsections 2 and 3, there is no surviving taker, the property passes in the following order:
- a. If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under

the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

- b. If no taker is produced by the application of subdivision a, the property passes to the transferor's heirs under section 30.1-09.1-11.

5. If, after the application of subsections 2 and 3, there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

- a. The property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and
- b. If no taker is produced by the application of subdivision a, the property passes as provided in subsection 4. For purposes of subsection 4, "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

**SECTION 16. AMENDMENT.** Section 30.1-09.1-09 of the North Dakota Century Code as created by section 39 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-09.1-09. (2-709) Representation - Per capita at each generation - Representation - Per stirpes.**

1. In this section:

- a. "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under section 30.1-09.1-02.
- b. "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
- c. "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 30.1-09.1-02.

- 2. If ~~an applicable statute or~~ a governing instrument calls for property to be distributed ~~"by representation" or~~ "per capita at each generation", the property is divided into as many equal shares as there are surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.



3. If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per stirpes", the property is divided into as many equal shares as there are surviving children of the designated ancestor and deceased children who left surviving descendants. Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.
4. For the purposes of subsections 2 and 3, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

**SECTION 17. AMENDMENT.** Section 30.1-09.1-11 of the North Dakota Century Code as created by section 39 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**30.1-09.1-11. (2-711) Future interests in heirs and like.** If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family", or language of similar import, the property passes to those persons, including the state ~~under section 30.1-04-05~~, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

**SECTION 18. AMENDMENT.** Subsection 4 of section 30.1-10-01 as created by section 40 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

4. The effects of disclaimer are:
  - a. If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would ~~take the disclaimant's share in the disclaimed interest~~ by representation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent.
  - b. If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or

contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant has predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would take the disclaimant's share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

- c. The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.

**SECTION 19. AMENDMENT.** Subsections 5, 8, and 9 of section 30.1-10-03 of the North Dakota Century Code as created by section 40 of chapter 334 of the 1993 Session Laws are amended and reenacted as follows:

5. Provisions of a governing instrument which are not revoked by this section are given effect as if the killer disclaimed all revoked provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.
8.
  - a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payer or other third party received written notice of a claimed forfeiture or revocation under this section. A payer or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a felonious killing or to seek any evidence with respect to a felonious killing even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in any such felonious killing. A payer or other third party is only liable for a payment made or other action actions taken two or more business days after the actual receipt by the payer or other third party received of written notice of a claimed forfeiture or revocation under this section. The payer or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subdivision b.
  - b. The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section. Written

notice of a claimed forfeiture or revocation under this subsection must be mailed to the payer's or third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payer or other third party does not constitute notice to the payer or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payer or other third party may take any action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for the payment to the court of amounts owed or transferred to or deposit with the court of any item of property, even if no probate proceedings have been commenced before the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

9. a. A person bona fide purchaser who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
- b. If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

**SECTION 20. AMENDMENT.** Subsections 4, 7, and 8 of section 30.1-10-04 of the North Dakota Century Code as created by section 40 of chapter 334 of the 1993 Session Laws are amended and reenacted as follows:

4. Provisions of a governing instrument ~~that are not revoked by this section~~ are given effect as if the former spouse and relatives of the former spouse disclaimed ~~the revoked all provisions revoked by this section~~ or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.
7.
  - a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payer or other third party received written notice of the divorce, annulment, or remarriage. A payer or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payer or other third party is only liable for a payment made or other action actions taken two or more business days after the actual receipt by the payer or other third party received of written notice of a claim forfeiture or revocation under this section. The payer or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subdivision b.
  - b. The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a divorce, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under this subdivision must be mailed to the payer's or other third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payer or other third party may take any action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for the payment to the court of amounts owed or transferred to or deposit with the court of any item of property, even if no probate proceedings have been commenced before the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination

under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

8. a. A person bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person ~~for value and without notice~~, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
- b. If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

**SECTION 21. AMENDMENT.** Section 30.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-12-02. (3-102) Necessity of order of probate for will.** Except as provided in section 30.1-23-01, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate or an adjudication of probate by the court; ~~except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if:~~

- 1: ~~No court proceeding concerning the succession or administration of the estate has occurred; and~~
- 2: ~~Either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will; or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.~~

**SECTION 22. AMENDMENT.** Section 30.1-12-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**30.1-12-08. (3-108) Probate, testacy, and appointment proceedings - Ultimate time limit.** No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

1. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceedings.
2. Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person.
3. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.
4. If no personal representative of a decedent's estate has been appointed in any proceeding within three years after the decedent's death, a proceeding for formal probate of a will or for adjudication of intestacy, with a request for an appointment of a personal representative, may be commenced at any time three years or more after the decedent's death for the sole purpose of establishing inheritance or succession of property in which the decedent possessed an interest at the time of death and for appointment of a personal representative to convey title to that property to the decedent's heirs or devisees. A description of the property must be included within the petition to the court. In addition to the parties specified in section 30.1-15-03, notice of a proceeding under this subsection must also be given to any person in possession of the property and to any person claiming an ownership interest in the property of whom the petitioner has actual or constructive notice. An informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceeding concerning the succession or estate administration has occurred within the three-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 30.1-18-09 beyond that necessary to confirm title to the assets in the successors to the estate and claims other than expenses of administration may not be presented against the estate.
5. A formal testacy proceeding may be commenced at any time after three years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent

when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under subsection 1 or 2, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.

**SECTION 23. AMENDMENT.** Section 30.1-15-12 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-15-12. (3-412) Formal testacy proceedings - Effect of order - Vacation.** Subject to appeal and subject to vacation as provided herein and in section 30.1-15-13, a formal testacy order under sections 30.1-15-09 through 30.1-15-11, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

1. The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will ~~were~~:
  - a. Were unaware of its existence at the time of the earlier proceeding; or ~~were~~
  - b. Were unaware of the earlier proceeding and were given no notice thereof, except by publication.
2. If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons ~~were~~:
  - a. Were unaware of their relationship to the decedent; ~~were~~;
  - b. Were unaware of ~~his~~ the decedent's death; or ~~were~~
  - c. Were given no notice of any proceeding concerning ~~his~~ the decedent's estate, except by publication.
3. A petition for vacation under either subsection 1 or 2 must be filed prior to the earlier of the following time limits:
  - a. If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement.
  - b. Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 30.1-12-08 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

- c. Twelve months after the entry of the order sought to be vacated.
4. The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.
5. The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under subsection 2 of section 30.1-15-03 was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any of the estate or its proceeds from distributees which is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

**SECTION 24. AMENDMENT.** Section 30.1-22-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-22-01. (3-1101) Effect of approval of agreements involving trusts, inalienable interests, or interest of third persons.** A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

**SECTION 25. AMENDMENT.** Section 30.1-22-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-22-02. (3-1102) Procedure for securing court approval of compromise.** The procedure for securing court approval of a compromise is as follows:

1. The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents or guardians acting for any minor children having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.
2. Any interested person, including the personal representative, if any, or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.
3. After notice to all interested persons or their representatives, including the personal representative of ~~the~~ any estate and all affected trustees, the court, if it finds that the contest or controversy is in good faith and that



the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents or guardians may be bound only if their parents or guardians join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

**SECTION 26. REPEAL.** Section 30.1-04-06 of the North Dakota Century Code, as amended by section 8 of chapter 334 of the 1993 Session Laws, is repealed.

**SECTION 27. AMENDMENT.** Section 51 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

**SECTION 51. EFFECTIVE DATE.** This Act becomes effective on ~~August 1, 1995~~ January 1, 1996.

**SECTION 28. EFFECTIVE DATE.** Sections 1 through 26 of this Act become effective on January 1, 1996.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 323****SENATE BILL NO. 2337**

(Senators Holmberg, Traynor)

**FOREIGN PERSONAL REPRESENTATIVE  
APPOINTMENT**

AN ACT to amend and reenact section 30.1-24-05 of the North Dakota Century Code, relating to orders concerning the appointment of a foreign personal representative.

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

**SECTION 1. AMENDMENT.** Section 30.1-24-05 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-24-05. (4-204) Proof of authority - Bond.** If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state, in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given, and the court shall enter an order establishing the filing of the copies.

Approved March 1, 1995

Filed March 1, 1995

**CHAPTER 324****SENATE BILL NO. 2240**

(Senators Traynor, Nething, W. Stenehjem)  
(Representatives Kretschmar, Mahoney, Nicholas)

**GIFTS UNDER POWER OF ATTORNEY**

AN ACT to create and enact a new section to chapter 30.1-30 of the North Dakota Century Code, relating to the making of gifts under a power of attorney.

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

**SECTION 1.** A new section to chapter 30.1-30 of the North Dakota Century Code is created and enacted as follows:

**Gifts under power of attorney.** If any power of attorney, durable or otherwise, or other writing authorizes an attorney in fact or other agent to perform any act that the principal might or could do or evidences the principal's intent to give the attorney in fact or agent full power to handle the principal's affairs or deal with the principal's property, the attorney in fact or agent may make gifts. The gifts may be in any amount of any of the principal's property to any individual or to an organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both. Notwithstanding this section, a principal, by express words in the power of attorney or other writing, may authorize, or limit the authority of, any attorney in fact or other agent to make gifts of the principal's property. This section applies to a power of attorney executed before August 1, 1995, as well as a power of attorney executed after July 31, 1995.

Approved March 10, 1995

Filed March 13, 1995

# JUDICIAL PROOF

## CHAPTER 325

### SENATE BILL NO. 2358

(Senators DeMers, W. Stenehjem)

(Representatives Kretschmar, Delmore)

## DNA TESTING AND DATA BASE

AN ACT to provide for DNA analysis and a DNA data base; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

1. "Department" means the department of corrections and rehabilitation.
2. "Division" means the forensic science division of the department of health and consolidated laboratories.
3. "DNA" means deoxyribonucleic acid.

**SECTION 2. DNA testing - Admissibility as evidence.** In any court proceeding, DNA testing is deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison must be admitted as prima facie evidence to prove or disprove the identity of any person. This section does not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider other relevant evidence of the identity of the person as is admissible in evidence.

**SECTION 3. Persons to be tested - Costs.** The court shall order any person convicted on or after the effective date of this Act of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department on or after the effective date of this Act as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood and other body fluids as required by this section. Any person convicted on or after the effective date of this Act who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified

by the sentencing court. The cost of the procedure must be assessed to the person being tested.

**SECTION 4. DNA testing - Procedure - Immunity - Penalty.** The samples of blood and other body fluids for DNA testing must be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or other qualified medical personnel approved by the division, and packaged and submitted in containers provided by the division and in accordance with rules adopted by the division. No civil or criminal liability may attach to any person authorized to draw blood and other body fluids as provided by this Act as a result of the act of drawing blood and other body fluids from any person, provided the blood and other body fluids were drawn according to generally accepted medical procedures. Any person who tampers or attempts to tamper with any sample of blood or other body fluids or the collection container without lawful authority is guilty of a class C felony.

**SECTION 5. DNA data base established - How utilized.** The division shall establish a centralized data base of DNA identification records for convicted sexual offenders. The established system must be compatible with the procedures set forth in the national DNA identification index to ensure data exchange on a national level. The centralized DNA data base must be used to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the identification or prosecution of sex-related crimes. The division shall receive, analyze, and classify samples in compliance with section 4 of this Act, and shall record the DNA result in a centralized data base for identification and statistical purposes. The division may contract with another laboratory for the analysis and classification of the samples. A report of the analysis certified by the division is admissible in any court as prima facie evidence of the facts stated in the report.

**SECTION 6. Confidentiality of records.** Notwithstanding section 44-04-18, except as necessary for law enforcement purposes, all records produced from the samples taken as provided in this Act must be securely stored and are confidential. However, the records must be available to:

1. Any person who is the subject of a record.
2. A public official or the official's authorized agent who requires that information in connection with the discharge of the official's official duties.
3. A court whenever the court determines that the information is necessary for the determination of an issue before the court.

**SECTION 7. Removal of DNA profiles from data base.** A person whose DNA profile has been included in the data base pursuant to this Act may petition the district court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The division shall expunge all identifiable information in the data base pertaining to the person and destroy all samples from the person upon receipt of a certified order.

**SECTION 8. Rules.** The department of health and consolidated laboratories shall adopt rules pursuant to chapter 28-32 necessary to carry out provisions of the DNA data base identification system. The rules must include procedures for collection, analysis, and classification of samples of blood and other

body fluids, data base system usage and integrity, and methods for contracting with another laboratory for the analysis and classification of samples.

**SECTION 9. DNA profiles to be available to law enforcement - Penalty.**

Upon payment of a reasonable fee established by the division, the division shall provide, upon the request of appropriate law enforcement agencies for use for official purposes, an updated list of names of individuals whose DNA profiles are stored in the data base at the division. Any person who disseminates, receives, or otherwise uses or attempts to use information in the data base, knowing that the dissemination, receipt, or use is for a purpose other than as authorized by law, is guilty of a class A misdemeanor.

Approved April 3, 1995

Filed April 3, 1995

# JUDICIAL REMEDIES

## CHAPTER 326

### HOUSE BILL NO. 1336

(Representatives Delmore, Christenson, Kretschmar)  
(Senators Heinrich, Redlin, W. Stenehjem)

## CRITICAL INCIDENT STRESS MANAGEMENT IMMUNITY AND RECORDS

AN ACT to provide for immunity from liability and confidentiality of records and proceedings relating to critical incident stress management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

1. "Critical incident" means any event encountered by emergency service personnel within the scope of their employment which causes them to experience unusually strong emotional reactions that have the potential to interfere with their ability to perform their jobs or that may interfere with their personal lives.
2. "Critical incident stress debriefing" means the process of resolving the effects of critical incidents on emergency service personnel through a structured meeting with both psychological and educational components according to the model approved by the state department of health and consolidated laboratories.
3. "Critical incident stress management team" means those volunteers who are recognized by the state department of health and consolidated laboratories as members of an organized group that provides critical incident stress debriefing services on behalf of the state.
4. "Emergency service personnel" means individuals who provide emergency services to persons requiring medical aid, firefighting services, law enforcement assistance, or other emergency assistance. The term includes law enforcement officers, firefighters, rescue personnel, ambulance personnel, quick response personnel, emergency service dispatchers, nurses, physicians, and other emergency care providers.
5. "Mental health personnel" means psychiatrists, licensed psychologists, licensed social workers, licensed mental health counselors, nurses, members of the clergy, and other individuals approved by the state department of health and consolidated laboratories to function as members of a critical incident stress management team, who have completed appropriate training as approved by the department.

6. "Peer support personnel" means those members of a critical incident stress management team who are emergency service personnel and who have completed appropriate training approved by the state department of health and consolidated laboratories.

**SECTION 2. Immunity from liability.** Notwithstanding any other law, any member of a critical incident stress management team is immune from any civil liability for the member's activities in connection with critical incident stress debriefing services unless, based upon the member's level of training, the member's activities constitute gross negligence.

**SECTION 3. Confidentiality of critical incident stress management team proceedings and records.** Notwithstanding sections 44-04-18 and 44-04-19, all records and proceedings of a critical incident stress management team in connection with its critical incident stress debriefing activities are confidential. The records and proceedings are not subject to discovery or introduction into evidence in any action or proceeding involving the emergency service personnel in attendance at a debriefing and which arises out of the matters that are the subject of the debriefing. No person in attendance at a debriefing may be required to testify in any action or proceeding as to any evidence or other matters produced or presented during the debriefing. Information, documents, or records otherwise available from original sources are not immune from discovery because they were presented during a critical incident stress debriefing. Any person in attendance at a critical incident stress debriefing may testify as to matters within the person's knowledge, but the person may not testify about the specific events that occurred at a debriefing.

Approved March 10, 1995

Filed March 13, 1995



**CHAPTER 327****HOUSE BILL NO. 1397**

(Representatives Tollefson, Wald, Walker)

**AUTOMOBILE ACCIDENT DAMAGE LIABILITY**

AN ACT to amend and reenact section 32-03.2-02.1 of the North Dakota Century Code, relating to automobile accident damage liability.

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

**SECTION 1. AMENDMENT.** Section 32-03.2-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-03.2-02.1. Automobile accident damage liability.** Notwithstanding section 32-03.2-02, in an action by any person to recover direct and indirect damages for injury to property, the damages may not be diminished in proportion to the amount of contributing fault attributable to the person recovering, or otherwise, if:

1. The party seeking damages is seeking property damages resulting from a two-party ~~automobile~~ motor vehicle accident;
2. The party seeking damages is seeking to recover direct physical property damages of not more than five thousand dollars and indirect damages not to exceed one thousand dollars; and
3. The percentage of fault of the person against whom recovery is sought is over fifty percent.

Approved March 21, 1995

Filed March 21, 1995

**CHAPTER 328****HOUSE BILL NO. 1338**

(Representatives Wardner, Maragos, Bernstein)  
(Senators St. Aubyn, Wanzek)

**LIENS ON WAGES**

AN ACT to amend and reenact section 32-09.1-21 of the North Dakota Century Code, relating to liens on wages.

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

**SECTION 1. AMENDMENT.** Section 32-09.1-21 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-21. Continuing lien on wages.** A plaintiff may obtain a ~~sixty-day~~ ninety-day continuing lien on wages by garnishment. If a lien is to be obtained, the plaintiff shall mark on the caption of the garnishee summons "continuing lien" and all disclosure forms must include the following:

Garnishee will continue to hold the nonexempt portion of the defendant's earnings as they accrue through the last payroll period ending on or before ~~sixty~~ ninety days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

At the time of the expected termination of the lien, the plaintiff shall mail to garnishee an additional copy of the disclosure form upon which the garnishee within ten days shall make further disclosure.

Approved March 21, 1995  
Filed March 21, 1995

## CHAPTER 329

### SENATE BILL NO. 2080

(Legislative Council)  
(Interim Sovereign Immunity Committee)  
(Senators Nething, W. Stenehjem, Redlin)  
(Representatives Kretschmar, Aarsvold)

## CIVIL ACTIONS AGAINST STATE

AN ACT to create and enact a new subsection to section 21-10-06 and chapter 32-12.2 of the North Dakota Century Code, relating to investment of funds by the state investment board and to claims against the state; to amend and reenact sections 15-10-17, 26.1-21-10.1, 26.1-21-10.2, paragraph 2 of subdivision e of subsection 2 of section 26.1-36-09, sections 32-12-04, 32-12.1-02, 32-12.1-03, 32-12.1-05, 32-12.1-07, and 44-04-19.1 of the North Dakota Century Code, relating to claims against the state and exemptions from open meeting requirements and to group health policy and health service contract mental disorder coverage; to suspend sections 15-10-17.2, 32-12.1-15, and 54-14-03.2 of the North Dakota Century Code, relating to claims against the state; to repeal sections 15-10-17.2, 32-12.1-15, and 54-14-03.2 of the North Dakota Century Code, relating to claims against the state; to provide an appropriation; to provide for a legislative council study; to provide for applicability; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-10-17 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-17. Specific powers and duties of board of higher education.** The state board of higher education ~~shall have~~ has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter, including ~~the following~~:

1. To appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of the appointment or removal of any such personnel shall be in executive session if the board chooses unless the person or persons involved request that the meeting shall be open to other persons or the public.
2. To have supervision and control of the grounds, buildings, and all other property of such institutions, and to authorize such institutions to maintain confidential records containing personal information regarding their prospective, current, or former students or regarding patients at the medical center rehabilitation hospital at the university of North Dakota, with the information in such records subject to release by the institution only upon a court order or the express or implied consent of the student or patient involved. A prospective, current, or former student shall be deemed to have consented to the release of all records to a prospective

employer upon application for employment to that employer, provided the position is of such a nature as to require security clearance. The board may procure all necessary apparatus, instruments, and appurtenances for instruction in said schools within the limits of legislative appropriations therefor.

3. To adopt rules, regulations, and bylaws for the government of each of such institutions and of all the departments and branches thereof.
4. To determine the moral and educational qualifications of applicants for admission to the various courses of instruction and to prescribe rules, regulations, and bylaws for the admission of students, but no instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of such institutions, and no sectarian or partisan test shall ever be allowed or exercised in the election of professors, teachers, or other officers of the institutions, or in the admission of students, or for any purpose whatsoever.
5. To prescribe rules and regulations for the management of the libraries, cabinets, museums, laboratories, and all other property of the institutions under its control, and for the care and preservation thereof, with suitable penalties and forfeitures by way of damages for their violation, which may be collected by action in the name of the board in any court having jurisdiction.
6. To prescribe the books or works to be used in the several courses of instruction, and to confer such degrees and to grant such certificates or diplomas for the work done as are usual or appropriate in similar institutions.
7. To confer upon the faculty, through bylaws, the power to suspend or expel students for misconduct or for other causes prescribed in such bylaws.
8. To act in consultation with the president of each institution to minister to the needs and proper development of each institution in harmony with the best interests of the people of the state, and to improve higher and technical education in the state.
9. To coordinate and correlate the work in the different institutions to prevent wasteful duplication and to develop cooperation among the institutions in the exchange of instructors and students.
10. To fix registration or matriculation fees and other incidental fees to be paid by students in the various institutions under its control or in any department thereof when not otherwise provided by law.
11. To fix and charge fees for instruction furnished in the professional schools and colleges and for extra studies.
12. To make recommendations in regard to needed legislation for the institutions under its control.
13. To establish a retirement program as an alternative to chapter 15-39.1 for employees of institutions under its control subject to the following guidelines:

- a. Benefits under the program shall be provided through annuity contracts purchased by the board but which shall become the property of the participants;
- b. The cost of the annuity contracts shall be defrayed by contributions made pursuant to rules of the state board of higher education;
- c. Eligible employees appointed before July 1, 1973, shall participate in the alternate retirement program only by their individual election. When the electing eligible employee is a member of the teachers' fund for retirement, the employee's assessments and employer's contributions together with interest credited at the current rate for one-year certificates then being paid by the Bank of North Dakota shall be transferred to the employee's account in the alternate program. Such election shall be made prior to July 1, 1980, and shall relinquish all rights the eligible employee or the employee's beneficiary may have to benefits provided in chapters 15-39 and 15-39.2;
- d. Employees of Bismarck state college and university of North Dakota - Lake Region coming under the jurisdiction of the board who are members of the teachers' fund for retirement may elect prior to July 1, 1985, to continue membership in the teachers' fund for retirement in lieu of the alternate retirement program. If an employee does not elect to continue membership in the teachers' fund for retirement, membership in that fund will terminate and the employee will become a member of the alternate retirement program established by the board effective July 1, 1985. An employee of the above-named colleges who becomes a member of the alternate retirement program may elect prior to July 1, 1985, to have the employee's assessments and employer's contributions in the teachers' fund for retirement with interest transferred by the board of trustees of the teachers' fund for retirement to the employee's account in the alternate retirement program. If an employee elects to transfer the employee's assessment and employer's contributions together with interest to the alternate retirement program, the employee relinquishes all rights the employee or the employee's beneficiary may have to benefits provided in chapters 15-39, 15-39.1, and 15-39.2; and
- e. Employees of institutions under the control of the state board of higher education who are members of the public employees retirement system and who become entitled to participate in the alternate retirement program are entitled to a special annuity purchase in the alternate retirement program in accordance with this subdivision. An eligible employee who consents to have that employee's contribution included is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, used by the retirement board of the public employees retirement system to purchase for that employee an annuity in the alternate retirement program in lieu of any other rights under the public employees retirement fund. However, before the employer's contribution may be used for an annuity purchase, the employee's combined years of service with the public employees retirement system and the alternate retirement program must equal or exceed the years of service necessary to be

eligible for retirement benefits under the public employees retirement system. An employee who transferred from the public employees retirement system prior to March 30, 1987, and who received a refund of that employee's contribution is entitled to have the employer's contribution, with interest, used to purchase an annuity even if that employee did not purchase an annuity in the alternate employee program with the employee's contribution. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under chapter 54-52.

The board shall provide for the administration of the alternate retirement program and establish rules therefor consistent with the foregoing guidelines. Nothing in this subsection shall be construed in derogation of any existing retirement programs approved by the board.

14. ~~To insure itself and its employees and the officers, employees, and students, and any building or other property, real or personal, of any institution under its control against any loss or liability it deems advisable. If the board or any institution under its control purchases insurance pursuant to this subsection, the purchaser shall waive immunity to suit for liability only to the types of insurance coverage purchased and only to the extent of the policy limits of such coverage. For the public buildings, fixtures, and permanent contents therein described in chapter 26-1-22, insurance secured under this subsection shall be supplemental to and not in lieu of chapter 26-1-22. If a premium savings will result, policies purchased hereunder may be taken out for more than one year, but in no event beyond a period of five years. Policies may be secured in individual or master policy form.~~
- ~~15.~~ 15. To determine policy for purchasing by the institutions of higher education in coordination with the office of management and budget as provided by law.
- ~~16.~~ 15. To establish by rule an early retirement program for faculty and officers of the board as defined by the board. The limitations on severance pay pursuant to section 54-14-04.3 and on requiring the employee to pay contributions to continue on the state uniform group insurance program upon retirement or upon termination of employment pursuant to section 54-52.1-03 shall not apply to the early retirement program.
- ~~17.~~ 16. To adopt rules to protect the confidentiality of proprietary information received from sponsors of research conducted by the institutions as well as information generated by that research. No rule promulgated by the board may in any way limit or otherwise affect the applicability or implementation of any rule or regulation of the state department of health and consolidated laboratories. Each grant or contract involving confidential information must be explained in the institution's report to the board of grants and contracts received and must be reviewed at the board's public meeting.
- ~~18.~~ 17. To authorize and encourage institutions of higher education under its control to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and

industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.

**SECTION 2.** A new subsection to section 21-10-06 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

State risk management fund.

**SECTION 3. AMENDMENT.** Section 26.1-21-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-10.1. State employee - Defense.**

1. ~~As used in~~ In this section, unless the context ~~or subject matter~~ otherwise requires:
  - a. ~~"Employee of the state" means all present or former officers or employees of the state or any of its agencies, departments, boards, or commissions; or persons acting on behalf of such agencies, departments, boards, or commissions in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.~~
  - b. ~~"Scope of office or employment" means the officer or state~~ employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned to the employee by competent authority. Actions of ~~an a state~~ employee which constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct are not within the scope of the employee's ~~office or~~ employment for purposes of this chapter.
  - ~~e- b.~~ b. "State" means the state of North Dakota and includes each of its agencies, departments, boards, commissions, and offices.
  - c. "State employee" means every present or former officer or employee of the state or any person acting on behalf of a state agency, board, commission, or department in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.
2. The state of North Dakota shall defend any ~~state employee of the state~~ in connection with any civil claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring heretofore or hereafter during the employee's period of employment if the employee provides complete disclosure and cooperation in the defense of the claim or demand, and if the actions complained of were within the scope of the employee's employment. The head of the agency, department, board, or commission that employs the state employee shall advise the attorney general as to whether it deems the employee's actions ~~which that~~ are the subject of the action to have been within the scope of the employee's employment. The determination of whether ~~an a state~~ employee of the ~~state~~ was acting within the scope of the employee's employment must be made by the attorney general. If the attorney general determines that the employee was acting within the scope of the employee's employment, the state shall provide the employee with a defense by or under the control of the attorney general or the attorney general's assistants. This

section ~~may~~ is not be construed as a waiver, limitation, or modification of any ~~existing~~ immunity or other defenses of the state or any of its ~~agencies, departments, commissions, boards,~~ officers; or employees, nor ~~may does it be construed as creating create~~ any causes of action against any of these entities. ~~Nothing provided by this section may be construed to be insurance within the meaning of section 32-12-1-15.~~

**SECTION 4. AMENDMENT.** Section 26.1-21-10.2 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-10.2. State employee defense - Expenses withdrawn by attorney general.** The attorney general may withdraw from the state bonding fund those amounts, not exceeding a total of two hundred fifty thousand dollars, necessary to pay the costs of the defense of state employees of the state provided a defense under sections section 26.1-21-10.1; 26.1-21-10.2, and 32-12-1-15.

<sup>175</sup> **SECTION 5. AMENDMENT.** Paragraph 2 of subdivision e of subsection 2 of section 26.1-36-09 as created by section 1 of Senate Bill No. 2292, as approved by the fifty-fourth legislative assembly, is amended and reenacted as follows:

- (2) A person who is a licensed certified social worker qualified for third-party payment by the board of social work examiners on August 1, 1995, is exempt from subparagraphs c and d. Supervision under subparagraph c may be provided by a qualified clinical social worker, a licensed psychologist, or a licensed psychiatrist, but the preferred supervisor is the qualified clinical social worker.

**SECTION 6. AMENDMENT.** Section 32-12-04 of the North Dakota Century Code is amended and reenacted as follows:

**32-12-04. How judgment collected.** No execution ~~shall~~ may issue against the state on any judgment, but whenever a final judgment against the state ~~shall have~~ has been obtained in any action other than an action under chapter 32-12.2, the clerk shall make and furnish to the office of the budget a duly certified copy of ~~such~~ the judgment. After approval, and if funds have been appropriated therefor, the office of the budget, in due course, shall prepare and issue a warrant for the amount of such judgment and deliver the same to the person entitled thereto.

**SECTION 7. AMENDMENT.** Section 32-12.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-12.1-02. Definitions.** As used in this chapter, unless the context ~~or subject matter~~ otherwise requires:

1. "Claim" means any claim permitted by this chapter brought against a political subdivision for an injury caused by a political subdivision or an

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<sup>175</sup> Section 26.1-36-09 was also amended by section 1 of Senate Bill No. 2292, chapter 289; section 2 of House Bill No. 1058, chapter 243; and section 2 of Senate Bill No. 2480, chapter 288.



employee of the political subdivision acting within the scope of the employee's employment or office.

2. "Commissioner" means the commissioner of insurance.
3. "Employee" means any officer, employee, board member, volunteer, or servant of a political subdivision, whether elected or appointed and whether or not compensated; but. The term does not include an independent contractor, or any person performing tasks the details of which the political subdivision has no right to control.
4. "Injury" means personal injury, death, or property damage. Personal injury includes sickness or disease sustained by any person caused by a political subdivision or an employee thereof. Property damage includes injury to or destruction of tangible property caused by a political subdivision or an employee thereof.
5. "Political subdivision":
  - a. Includes all counties, townships, park districts, school districts, cities, public nonprofit corporations, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this chapter.
  - b. Does not include nor may it be construed to mean either the state of North Dakota or any of the several agencies, boards, bureaus, commissions, councils, courts, departments, institutions, or offices of government which collectively constitute the government of the state of North Dakota.
6. "State agency" means an agency, board, commission, bureau, office, department, and institution of state government. "Public nonprofit corporation" means a nonprofit corporation that performs a governmental function and is funded, entirely or partly, by the state, a city, county, park district, school district, or township.

**SECTION 8. AMENDMENT.** Section 32-12.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-12.1-03. Liability of political subdivisions - Limitations.**

1. Each political subdivision ~~shall be~~ is liable for money damages for injuries when the injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of the employee's employment or office under circumstances where the employee would be personally liable to a claimant in accordance with the laws of this state, or injury caused from some condition or use of tangible property, real or personal, under circumstances where the political subdivision, if a private person, would be liable to the claimant.
2. The liability of political subdivisions under this chapter is limited to a total of two hundred fifty thousand dollars per person and five hundred thousand dollars for injury to three or more persons during any single occurrence regardless of the number of political subdivisions, or

employees of such political subdivisions, which are involved in that occurrence. ~~In no event may a~~ A political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.

3. A political subdivision is not liable for any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved be abused. Specifically, a political subdivision or an employee thereof is not liable for any claim ~~which~~ that results from:
  - a. The decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
  - b. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
  - c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion be abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
  - d. The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this subsection does not provide immunity for damages resulting from acts of gross negligence.

Nothing contained in this ~~This~~ subsection ~~may be construed to~~ does not limit the liability of a political subdivision or an employee thereof for a personal injury arising out of the execution of any legislative or quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

4. ~~The sovereign immunity of the state is not waived in any manner by this chapter; and this chapter shall not be construed to abrogate the immunity of the state.~~
5. Nothing contained in this ~~This~~ chapter ~~shall be construed to~~ does not obligate political subdivisions for an amount ~~which~~ that is more than the limitations upon liability imposed by this chapter. Subject to ~~the~~ provisions of this chapter, any payments to persons ~~shall~~ constitute payment in full of any compromised claim or judgment or any final judgment under this chapter.

- ~~6-~~ 5. Notwithstanding the ~~provisions~~ of this chapter, a political subdivision or its insurance carrier is not liable for any claim arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.
- ~~7-~~ 6. A political subdivision is not liable for any claim based on an act or omission in the designation, repair, operation, or maintenance of a minimum maintenance road if that designation has been made in accordance with sections 24-07-35 through 24-07-37 and if the road has been maintained at a level to serve occasional and intermittent traffic.

**SECTION 9. AMENDMENT.** Section 32-12.1-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-12.1-05. Liability insurance policy coverage.** An insurance policy or insurance contract purchased by a political subdivision ~~or state agency~~ or a government self-insurance pool in which a political subdivision ~~or state agency~~ participates pursuant to this chapter may provide coverage for the types of liabilities established by this chapter and may provide such additional coverage as the ~~state agency or the~~ governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter confers no right upon a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the required insurance coverage, the dispute must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision ~~or state agency~~ pursuant to any other provision of law and if premium savings will result therefrom, any insurance ~~policies~~ policy purchased pursuant to this chapter or any other provision of law may be written for a period which exceeds one year.

**SECTION 10. AMENDMENT.** Section 32-12.1-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-12.1-07. Authorized insurance.**

1. The insurance authorized by this chapter may be provided by:
  - a. Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes.
  - b. An insurance company authorized to do business in this state which the commissioner has determined to be responsible and financially sound, considering the extent of the coverage required.
  - c. Any combination of the methods of obtaining insurance authorized in subdivisions a and b.
2. ~~Nothing in this~~ This chapter ~~shall be construed to~~ does not prohibit a political subdivision ~~or state agency~~ from uniting with other political subdivisions ~~and state agencies~~ in order to purchase liability insurance or to self-insure.

**SECTION 11.** Chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

**32-12.2-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim for relief brought against the state or a state employee for an injury caused by the state or a state employee acting within the scope of the employee's employment whether in the state or outside the state.
2. "Injury" means personal injury, death, or property damage.
3. "Occurrence" means an accident, including continuous or repeated exposure to a condition, which results in an injury.
4. "Personal injury" includes bodily injury, mental injury, sickness or disease sustained by a person and injury to a person's rights or reputation.
5. "Property damage" includes injury to or destruction of tangible or intangible property.
6. "Scope of employment" has the same meaning as defined in section 26.1-21-10.1.
7. "State" includes an agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, and office of the state.
8. "State employee" means a state employee as defined in section 26.1-21-10.1.
9. "State institution" means the state hospital, the developmental center at Grafton, the state penitentiary, the Missouri River correctional center, the North Dakota industrial school, the school for the blind, and the school for the deaf.

32-12.2-02. Liability of the state - Limitations - Statute of limitations.

1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly.
2. The liability of the state under this chapter is limited to a total of two hundred fifty thousand dollars per person and seven hundred fifty thousand dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the seven hundred fifty thousand dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget

for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered.

3. Neither the state nor a state employee may be held liable for any of the following claims:
- a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.
  - b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid.
  - c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
  - d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
  - e. A claim resulting from the assessment and collection of taxes.
  - f. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
  - g. A claim resulting from any injury caused by a wild animal in its natural state.
  - h. A claim resulting from the condition of unimproved real property owned by the state.
  - i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
  - j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
  - k. A claim resulting from damage to the property of a patient or inmate of a state institution.
  - l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.

- m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- 4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.
- 5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of the effective date of this Act.

32-12.2-03. State to be named in action - Personal liability of employees - Indemnification of claims and final judgments.

- 1. An action for an injury proximately caused by the alleged negligence, wrongful act, or omission of a state employee occurring within the scope of the employee's employment must be brought against the state.
- 2. A state employee is not personally liable for money damages for an injury when the injury is proximately caused by the negligence, wrongful act, or omission of the employee acting within the scope of employment.
- 3. A state employee may not be held liable in the employee's personal capacity for acts or omissions of the employee occurring within the scope of the employee's employment. A state employee may be personally liable for money damages for an injury when the injury is proximately caused by the negligence, wrongful act, or omission of the employee acting outside the scope of the employee's employment. The plaintiff in such an action bears the burden of proof to show by clear and convincing evidence that the employee was acting outside the scope of the employee's employment. The extent to which an employee may be personally liable under this section and whether the employee was acting within the scope of employment must be specifically stated in a final judgment.
- 4. Except for claims or judgments for punitive damages, the state shall indemnify and save harmless a state employee for any claim, whether groundless or not, and final judgment for any act or omission occurring within the scope of employment of the employee.
- 5. A judgment in a claim against the state is a complete bar to any claim by the claimant, resulting from the same injury, against the employee whose act or omission gave rise to the claim.

32-12.2-04. Notice required.

- 1. A person bringing a claim against the state or a state employee for an injury shall present to the director of the office of management and budget within one hundred eighty days after the alleged injury is discovered or reasonably should have been discovered a written notice stating the time, place, and circumstances of the injury, the names of any state employees known to be involved, and the amount of compensation or other relief demanded. The time for giving the notice does not include the time during which a person injured is incapacitated by the

injury from giving the notice. If the claim is one for death, the notice may be presented by the personal representative, surviving spouse, or next of kin within one year after the alleged injury resulting in the death.

2. Within two working days after receipt of notice of a claim, the director of the office of management and budget shall forward the notice of a claim to the head of the state entity involved, the attorney general, and any other insurer providing coverage for that state entity. The director, in consultation with the head of the state entity involved and the attorney general, may settle claims covered by the state risk management fund. For all claims, a settlement made under this section is not valid unless it is supported by a claim in writing and is approved and signed by the attorney general.
3. The acceptance by the claimant of a settlement is final and conclusive on the claimant and constitutes a complete release of any claim against the state and the state employee whose act or omission gave rise to the claim.

32-12.2-05. Arbitration of claims. The director of the office of management and budget, in consultation with the head of the state entity involved and the attorney general, may agree to submit a claim covered by the state risk management fund to mediation or binding arbitration. If a claim is submitted to arbitration, the arbitrator must apply the limitations on liability imposed under this chapter in deciding the claim.

32-12.2-06. Liability insurance - Reinsurance. Upon approval of the director of the office of management and budget, an entity of the state may participate in a government self-insurance pool or may purchase insurance against liability of the entity and its employees for damages resulting from claims under this chapter. The director shall limit participation in government self-insurance pools and the purchase of insurance to exposures determined to cause an excessive financial risk to the state risk management fund including exposures reasonably expected to deplete the fund and have a significant detrimental impact on the state's budget. The insurance may be provided by an insurance company authorized to do business in this state which the commissioner of insurance has determined to be responsible and financially sound, considering the extent of the coverage required, or coverage may be provided by a government self-insurance pool. If a premium savings will result and the director of the office of management and budget approves, the insurance policy or memorandum of coverage may be in force from one through three years from the date of issue. The director may procure an excess loss reinsurance contract for the state.

32-12.2-07. Risk management fund - Appropriation.

1. The director of the office of management and budget shall implement and administer a program of self-insurance for the state through the establishment of a risk management fund. Each entity of the state shall participate in the program by contributing the appropriate share of its costs as determined by the director.
2. The state risk management fund is a special fund in the state treasury administered by the director of the office of management and budget. The fund is a revolving fund consisting of contributions from participating state entities and other appropriations by the legislative assembly. The state investment board shall invest the fund in

accordance with chapter 21-10. Funds received as contributions from state entities and interest and income received on investments are hereby appropriated for the purposes of the fund. Section 54-44.1-11 does not apply to the fund.

3. The director of the office of management and budget shall:
  - a. Review the state's exposure to various types of potential risks in consultation with affected state entities and advise state entities as to the reduction of risk and fiscal management of those losses.
  - b. Be responsible for statewide risk management coordination, evaluation of funding and insuring alternatives, and the approval of all insurance purchases or government self-insurance pool participation in consultation with affected state entities.
  - c. Identify methods to eliminate redundant efforts in the management of state risk management and insurance programs.
  - d. Administer the state risk management fund or contract for a third-party administrator.
4. The director of the office of management and budget may request bids from insurance carriers or government self-insurance pools or negotiate with insurance carriers and government self-insurance pools and may enter into contracts of insurance with carriers or memorandums of coverage with government self-insurance pools that are best qualified to underwrite and service insurance or coverage programs for the state through the risk management fund.

32-12.2-08. Duties of director of the office of management and budget. The director of the office of management and budget is responsible for determining the specifications for liability insurance or coverage for the state. The director shall require an insurance company or government self-insurance pool providing coverage for the state to guarantee that its policy or memorandum of coverage provides minimum coverages pursuant to required specifications.

32-12.2-09. Insurance no waiver of immunity. No purchase of insurance or participation in a government self-insurance pool by the state may be construed as a waiver of any immunity to suit.

32-12.2-10. Eleventh Amendment immunity preserved. This chapter does not waive the state's immunity under the Eleventh Amendment to the United States Constitution in any manner, and this chapter may not be construed to abrogate that immunity.

**SECTION 12. AMENDMENT.** Section 44-04-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-19.1. Open records and open meetings - Exemptions for attorney work product and attorney consultation.**

1. Attorney work product is exempt from ~~the provisions of~~ section 44-04-18. Attorney work product and copies thereof shall not be open to public inspection, examination, or copying unless specifically made public by the public agency receiving such work product.



2. Attorney consultation is exempt from ~~the provisions of~~ section 44-04-19. That portion of a meeting of a public agency during which an attorney consultation occurs may be closed, by a majority vote of the public agency in an open meeting for the purpose of having the attorney consultation. The remainder of the meeting, where no attorney consultation occurs, is an open meeting unless a specific exemption is otherwise applicable.
3. "Attorney work product" means any document or record ~~which~~ that:
  - a. Was prepared by an attorney representing a public agency or prepared at such an attorney's express direction;
  - b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the agency; and
  - c. Was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings.
4. "Attorney consultation" means any discussion between a public agency and its attorney in instances in which the public agency seeks or receives the attorney's advice in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings or concerning pending civil or criminal litigation or pending adversarial administrative proceedings.
5. "Public agency" means all public or governmental bodies, boards, bureaus, commissions, or agencies of the state, or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds or expending public funds.
6. "Adversarial administrative proceedings" include only those administrative proceedings where the administrative agency acts as a complainant or respondent in an adverse administrative proceeding. This term does not refer to those instances where the administrative agency acts in its own rulemaking capacity.
7. Following the final completion of the civil or criminal litigation or the adversarial administrative proceeding, including the exhaustion of all appellate remedies, attorney work product must be made available for public disclosure by the public agency.

**SECTION 13. SUSPENSION.** Section 15-10-17.2 of the North Dakota Century Code and sections 32-12.1-15 and 54-14-03.2 of the 1993 Supplement to the North Dakota Century Code are suspended upon the effective date of this Act. If Senate Concurrent Resolution No. 4014, as adopted by the fifty-fourth legislative assembly, is approved by the voters, sections 15-10-17.2, 32-12.1-15, and 54-14-03.2 are suspended only through July 31, 1997, and on August 1, 1997, those sections become effective as they existed immediately before the effective date of this Act.

**SECTION 14. REPEAL.** Section 15-10-17.2 of the North Dakota Century Code and sections 32-12.1-15 and 54-14-03.2 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 15. SEVERABILITY INTERPRETATION.** Section 1-02-20 applies to chapter 32-12.2.

**SECTION 16. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the state risk management fund in the state treasury, not otherwise appropriated, to the office of management and budget for the purpose of administering the state risk management program and providing for the defense of the state or an employee of the state pursuant to chapter 32-12.2, for the period beginning with the effective date of this Act and ending June 30, 1997, as follows:

Risk management	<u>\$1,207,000</u>
Total special funds appropriation	<u>\$1,207,000</u>

**SECTION 17. APPROPRIATION.** The following sums, or so much of the sums as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury or from federal or other funds as indicated to the state agencies and institutions named for the purpose of paying liability insurance premiums for the period beginning with the effective date of this Act and ending June 30, 1997:

AGENCY OR INSTITUTION	GENERAL FUND	SPECIAL FUNDS	TOTAL
Governor	\$ 5,808		\$ 5,808
Secretary of state	8,068		8,068
Office of management and budget	39,238		39,238
Information services division		\$ 44,206	44,206
State auditor	11,287	5,559	16,846
Central services	992	6,638	7,630
State treasurer	3,442		3,442
Attorney general	52,469	9,259	61,728
Tax commissioner	50,342		50,342
Office of administrative hearings	552	940	1,492
Retirement and investment office		6,132	6,132
Public employees retirement system		5,578	5,578
Legislative council	1,000		1,000
Supreme court	20,220		20,220
Judicial conduct commission	2,152		2,152
Trial courts	81,748		81,748
Department of public instruction	19,232	23,506	42,738
State library	9,520		9,520
School for the deaf	16,556		16,556
School for the blind	11,278		11,278
State board for vocational and technical education	4,980	5,184	10,164
North Dakota university system office	6,390		6,390
Bismarck state college	34,718		34,718
University of North Dakota - Lake Region	17,944		17,944
University of North Dakota - Williston	3,874		3,874
University of North Dakota	246,196		246,196
University of North Dakota	77,798	91,328	169,126

medical center			
North Dakota state university	136,744		136,744
North Dakota state college of science	60,128		60,128
Dickinson state university	21,534		21,534
Mayville state university	9,044		9,044
Minot state university	77,240		77,240
Valley city state university	31,766		31,766
North Dakota state university - Bottineau	6,720		6,720
North Dakota forest service	7,026		7,026
Department of health and consolidated laboratories	85,779	85,779	171,558
Indian affairs commission	560		560
Department of veterans affairs	3,024		3,024
Children's services	646		646
coordinating committee			
Department of human services	410,711	45,635	456,346
Protection and advocacy project	13,766		13,766
Insurance commissioner		16,098	16,098
Industrial commission	19,820	2,962	22,782
Labor commissioner	2,582		2,582
Public service commission	10,008	5,878	15,886
Department of banking and financial institutions		10,324	10,324
Securities commissioner	3,012		3,012
Bank of North Dakota		67,766	67,766
North Dakota housing finance agency		16,458	16,458
North Dakota mill and elevator association		53,350	53,350
Job service North Dakota		144,662	144,662
Workers compensation bureau		50,178	50,178
Highway patrol		19,908	19,908
State radio communications	9,242		9,242
Division of emergency management	1,807	7,227	9,034
Department of corrections and rehabilitation	171,344	37,612	208,956
Adjutant general	22,133	51,643	73,776
Department of economic development and finance	9,680		9,680
Agriculture department	10,467	3,489	13,956
Soil conservation committee	1,936		1,936
Agricultural products utilization commission	323	323	646
Seed department		7,400	7,400
Upper great plains transportation institute	542	3,330	3,872
North Dakota state university extension service	44,531	29,687	74,218
Northern crops institute	2,582		2,582
Main research station	70,950	38,204	109,154
Dickinson research center	4,116		4,116
Central grasslands research center	1,616		1,616
Hettinger research center	2,453	129	2,582

1006	Chapter 329	Judicial Remedies	
Langdon research center	1,962	218	2,180
North central research center	1,936		1,936
Williston research center	2,582		2,582
Carrington research center	3,415	1,263	4,678
Agronomy seed farm		970	970
Land reclamation research center		6,698	6,698
State historical society	12,031	1,337	13,368
Council on the arts	1,421	355	1,776
Game and fish department		26,970	26,970
Department of tourism	3,226		3,226
Department of parks and recreation	8,688		8,688
State water commission	34,534		34,534
Department of transportation		635,616	635,616
Total	<u>\$2,049,431</u>	<u>\$1,569,799</u>	<u>\$3,619,230</u>

**SECTION 18. PENDING CASES.** A state agency may pay, from its 1995-97 biennium operating budget appropriation, settlements or judgments resulting from court decisions affecting state agency liability for claims accruing before the effective date of this Act, subject to written approval of the attorney general, for the biennium beginning July 1, 1995, and ending June 30, 1997. Any state agency that pays a settlement or judgment may request, if necessary, a deficiency appropriation from the fifty-fifth legislative assembly.

**SECTION 19. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying the impact of the North Dakota supreme court decision abolishing the doctrine of sovereign immunity during the 1995-96 interim.

**SECTION 20. APPLICABILITY.** This Act applies only to claims that accrue after the effective date of this Act. If this Act becomes ineffective pursuant to section 22 of this Act, any claim that accrues during the period during which the Act is effective is governed by this Act. If this Act becomes ineffective, any funds in the state risk management fund must be maintained in the fund to pay any judgments or settled claims after the Act becomes ineffective.

**SECTION 21. EFFECTIVE DATE.** Sections 1 through 4, 6 through 13, and 15 through 20 of this this Act become effective fifteen days after the adjournment of the fifty-fourth legislative assembly. Section 5 becomes effective August 1, 1995. If Senate Concurrent Resolution No. 4014, as approved by the fifty-fourth legislative assembly, is not approved by the voters, section 14 of this Act becomes effective upon the official certification by the secretary of state that the measure was not approved.

**SECTION 22. EXPIRATION DATE.** If Senate Concurrent Resolution No. 4014 is approved by the fifty-fourth legislative assembly and the measure is approved by the voters, sections 1 through 4, 6 through 11, and section 15 of this Act are effective through July 31, 1997, and after that date are ineffective.

**SECTION 23. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 18, 1995  
 Filed April 18, 1995

## CHAPTER 330

## SENATE BILL NO. 2352

(Senators Nething, Grindberg, Mushik, Robinson)

COMMERCIAL REAL ESTATE DEFICIENCY  
JUDGMENTS

AN ACT to amend and reenact sections 32-19-06.1 and 32-19.1-07 of the North Dakota Century Code, relating to deficiency judgments on commercial real estate loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19-06.1. Deficiency judgments on commercial real property. Notwithstanding any other provision of law, a ~~person mortgagee~~ holding a mortgage on commercial real property may obtain a deficiency judgment against the mortgagor of commercial real property contracted for after August 1, 1993, and any successor in interest of the mortgagor who has assumed the debt secured by the mortgage. In an action for involving the foreclosure of a mortgage on commercial real property, the plaintiff foreclosing party shall state in the complaint its pleading whether a deficiency judgment will be sought, identify the defendant or defendants parties claimed to be personally liable for the amount due payment of the debt secured by the mortgage being foreclosed, and demand a deficiency judgment against those defendants parties. Within ten ninety days after filing and serving the summons and complaint on the defendants the later of the filing or service of the pleading seeking the foreclosure of a mortgage, the plaintiff party seeking a deficiency judgment on commercial real property shall file with the clerk of district court a request notice for an appraisal of the real property by a licensed or certified appraiser and serve mail a copy of the request upon the defendants to the parties claimed to be liable for a deficiency, at their last known residences or business addresses by first-class mail. The request notice must contain the plaintiff's foreclosing party's agreement to pay the cost of the appraisal, which must be included as a cost allowed to the plaintiff the foreclosing party if judgment is entered granting foreclosure. Upon the filing of the request notice, the plaintiff foreclosing party shall arrange for an appraisal of the property and shall notify the defendants, at their last known address, of the request for an appraisal. Within not more than twenty days after completion of the appraisal, the appraiser shall provide to the plaintiff foreclosing party and file with the clerk of court a written report indicating the present fair market value of the commercial real property. The plaintiff foreclosing party shall also serve mail copies of the report on to the defendants named in the complaint parties claimed to be personally liable to their last known residences or business addresses by first-class mail. Within fifteen days of the filing and serving later of the filing or mailing of the report of the foreclosing party's appraisal, any party may file a notice of intention to obtain an additional appraisal to be conducted by a licensed or certified appraiser at the party's own expense. The additional appraisal report must be served upon the foreclosing party and filed within thirty days of the filing of the notice of intention appraisal and must be considered, with other appraisal reports filed, in the determination by the court of the present fair market value of the property which determination as to fair market value must be made as of the date of the foreclosing party's appraisal. At the time

of the entry of the judgment, the court shall include in its findings of fact the ~~present~~ fair market value of the property and, if the ~~present~~ fair market value is less than the amount found to be due the ~~plaintiff~~ foreclosing party, identify the persons who are liable for any deficiency remaining after a sheriff's sale of the property pursuant to foreclosure judgment. The foreclosure judgment must be docketed as a money judgment against the persons personally liable in an amount equal to the balance then due and owing on the mortgage, plus costs taxed by the court. Upon entry of an order confirming the sheriff's sale in the foreclosure, the clerk of court shall note the amount to be credited ~~thereon~~ on the foreclosure judgment, which credit must be at least the amount bid at the sheriff's sale, less the cost of the sheriff's sale, which credit may not in any event be less than the present fair market value established by the court. However, only the amount actually paid in excess of the foreclosure judgment may constitute surplus payable to the debtor pursuant to section 28-23-09. At any time after the ~~sheriff's sale and final entry of judgment, the plaintiff may~~ order confirming sale, the clerk shall enter a money judgment to the extent of the deficiency against those parties found by the court to be personally liable for the deficiency. The foreclosing party may thereafter pursue the same remedies to collect the deficiency judgment as those are available to collect other money judgments. The amount collectible must include deficiency judgment must be for the entire amount found to be due the plaintiff foreclosing party in the foreclosure judgment, together with interest on the amount of the foreclosure judgment at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court upon entry of the order confirming the sheriff's sale. The deficiency judgment must bear interest at the same rate as the foreclosure judgment. As used in this section, "commercial real property" means any real property except residential real property consisting of fewer than three residential units and agricultural property, whose primary use is determined as of the time the mortgage is executed, as defined by section 57-02-01. As used in this section, "fair market value" means the highest price that commercial real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment, reduced by the value of any liens paramount to the lien of the foreclosing party. In addition to the appraisals filed by the parties, the court, in its determination of the fair market value of the property, may consider affidavits from the parties or other proof of paramount liens and other matters that may affect the value.

The provisions of this section are not available unless the ~~promissory note obligation and mortgage executed by the parties named as defendants in an action for a deficiency judgment contains~~ upon which the deficiency liability is based contain language located immediately above the signatures of the parties advising them that the ~~lender mortgagee~~ has the right to proceed to obtain and collect a deficiency judgment against the parties personally liable, together with foreclosure of the real property mortgaged under applicable laws.

**SECTION 2. AMENDMENT.** Section 32-19.1-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-19.1-07. No deficiency judgment allowed.** When any mortgage has been foreclosed under this chapter, the mortgagee or any party claiming by, through, or under said mortgagee shall not be entitled to any judgment for deficiency, except as provided in section 32-19-06.1. However, notwithstanding other provisions of state law, where a promissory note or other obligation and a mortgage, other than a first mortgage, upon real estate have been given to secure a debt contracted on or after August 1, 1993, a mortgagee may bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note or other obligation. The provisions of this section

allowing a mortgagee to bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note or other obligation apply only to residential real property consisting of four or fewer residential units.

Any promissory note ~~taken by a lender in connection with or other obligation secured by a second mortgage on real estate, other than a first mortgage,~~ must contain the following notice or direct action is not allowed:

"This ~~promissory note~~ obligation may be the basis for a personal action against the promisor or promisors in addition to other remedies allowed by law."

The notice must appear in printed or typed boldface capital letters within the body of the promissory note or other instrument evidencing the obligation.

Approved April 4, 1995

Filed April 4, 1995

**CHAPTER 331****HOUSE BILL NO. 1272**

(Representatives Keiser, Clayburgh, Nicholas, Mahoney)

**PROPERTY INSPECTIONS FOR ENVIRONMENTAL  
DAMAGE**

AN ACT to amend and reenact subsection 3 of section 32-40.1-02 of the North Dakota Century Code, relating to visual inspections of lender-owner property for environmental damage.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 32-40.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A lender-owner or representative is not by virtue of becoming the owner of property liable for any third-party liability arising from contamination or pollution emanating from the property during the period of ownership so long as, and to the extent that:
  - a. The lender-owner or representative does not knowingly cause new contamination or pollution or does not knowingly allow others to cause new contamination or pollution;
  - b. The lender-owner has, in good faith, caused ~~an environmental professional~~ an individual, including an officer or employee of the lender-owner, possessing the requisite knowledge and experience to conduct a visual inspection of the property to determine the presence and condition of hazardous wastes or substances and obvious contamination or pollution; and
  - c. The lender-owner found by the enforcing agency to be in noncompliance with federal or state laws takes steps to assure compliance with applicable laws.

Approved March 14, 1995

Filed March 14, 1995



**CHAPTER 332****SENATE BILL NO. 2101**

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

**UNIFORM CORRECTION OR CLARIFICATION OF  
DEFAMATION ACT**

AN ACT to adopt the Uniform Correction or Clarification of Defamation Act; and to repeal section 14-02-08 of the North Dakota Century Code, relating to libel suits against newspapers.

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

**SECTION 1. Definitions.** In this Act:

1. "Defamatory" means tending to harm reputation.
2. "Economic loss" means special, pecuniary loss caused by a false and defamatory publication.
3. "Person" includes any legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

**SECTION 2. Scope.** This Act applies to any claim for relief, however characterized, for damages arising out of defamation caused by the false content of a publication that is published on or after the effective date of this Act. This Act applies to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information.

**SECTION 3. Request for correction or clarification.**

1. A person may maintain an action for defamation only if the person has made a timely and adequate request for correction or clarification from the defendant or the defendant has made a correction or clarification.
2. A request for correction or clarification is timely if made within the period of limitation for commencement of an action for defamation. However, a person who, within ninety days after knowledge of the publication, fails to make a good faith attempt to request a correction or clarification may recover only provable economic loss.
3. A request for correction or clarification is adequate if the request:
  - a. Is made in writing and reasonably identifies the person making the request;
  - b. Specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
  - c. Alleges the defamatory meaning of the statement;

- d. Specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than the express language of the publication; and
  - e. States that the alleged defamatory meaning of the statement is false.
4. In the absence of a previous adequate request, service of a summons and complaint stating a claim for relief for defamation and containing the information required in subsection 3 constitutes an adequate request for correction or clarification.
5. The period of limitation for commencement of a defamation action is tolled during the period allowed in section 6 of this Act for responding to a request for correction or clarification.

**SECTION 4. Disclosure of evidence of falsity.** A person who has been requested to make a correction or clarification may ask the requester to disclose reasonably available information material to the falsity of the allegedly defamatory statement. If a correction or clarification is not made, a person who unreasonably fails to disclose the information after a request to do so may recover only provable economic loss. A correction or clarification is timely if published within twenty-five days after receipt of information disclosed under this section or forty-five days after receipt of a request for correction or clarification, whichever is later.

**SECTION 5. Effect of correction or clarification.** If a timely and sufficient correction or clarification is made, a person may recover only provable economic loss, as mitigated by the correction or clarification.

**SECTION 6. Timely and sufficient correction or clarification.**

1. A correction or clarification is timely if it is published before, or within forty-five days after, receipt of a request for correction or clarification, unless the period is extended under section 4 of this Act.
2. A correction or clarification is sufficient if it:
  - a. Is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;
  - b. Refers to the statement being corrected or clarified and:
    - (1) Corrects the statement;
    - (2) In the case of defamatory meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or to assert its truth; or
    - (3) In the case of a statement attributed to another person, disclaims an intent to assert the truth of the statement; and
  - c. Is communicated to the person who has made a request for correction or clarification.
3. A correction or clarification is published in a medium reasonably likely to reach substantially the same audience as the publication complained

of if it is published in a later issue, edition, or broadcast of the original publication.

4. If a later issue, edition, or broadcast of the original publication will not be published within the time limits established for a timely correction or clarification, a correction or clarification is published in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:
  - a. It is timely published in a reasonably prominent manner in another medium likely to reach an audience reasonably equivalent to the original publication or if the parties cannot agree on another medium, in the newspaper with the largest general circulation in the region in which the original publication was distributed;
  - b. Reasonable steps are taken to correct undistributed copies of the original publication, if any; and
  - c. It is published in the next practicable issue, edition, or broadcast, if any, of the original publication.
5. A correction or clarification is timely and sufficient if the parties agree in writing that it is timely and sufficient.

#### **SECTION 7. Challenges to correction or clarification or to request for correction or clarification.**

1. If a defendant in an action governed by this Act intends to rely on a timely and sufficient correction or clarification, the defendant's intention to do so, and the correction or clarification relied upon, must be set forth in a notice served on the plaintiff within sixty days after service of the summons and complaint or ten days after the correction or clarification is made, whichever is later. A correction or clarification is deemed to be timely and sufficient unless the plaintiff challenges its timeliness or sufficiency within twenty days after the notice is served.
2. If a defendant in an action governed by this Act intends to challenge the adequacy or timeliness of a request for correction or clarification, the defendant must set forth the challenge in a motion to declare the request inadequate or untimely served within sixty days after service of the summons and complaint. The court shall rule on the motion at the earliest appropriate time before trial.

#### **SECTION 8. Offer to correct or clarify.**

1. If a timely correction or clarification is no longer possible, the publisher of an alleged defamatory statement may offer, at any time before trial, to make a correction or clarification. The offer must be made in writing to the person allegedly defamed by the publication and:
  - a. Contain the publisher's offer to publish, at the person's request, a sufficient correction or clarification and to pay the person's reasonable expenses of litigation, including attorney's fees, incurred before publication of the correction or clarification; and

- b. Be accompanied by a copy of the proposed correction or clarification and the plan for its publication.
2. If the person accepts in writing an offer to correct or clarify made pursuant to subsection 1, the person is barred from commencing an action against the publisher based on the statement or if an action has been commenced, the court shall dismiss the action against the defendant with prejudice after the defendant complies with the terms of the offer.
3. A person who does not accept an offer made in conformance with subsection 1 may recover in an action based on the statement only damages for provable economic loss and reasonable expenses of litigation, including attorney's fees, incurred before the offer, unless the person failed to make a good faith attempt to request a correction or clarification in accordance with subsection 2 of section 3 of this Act or failed to disclose information in accordance with section 4 of this Act.
4. On request of either party, a court shall promptly determine the sufficiency of the offered correction or clarification.
5. The court shall determine the amount of reasonable expenses of litigation, including attorney's fees, specified in subsections 1 and 3.

**SECTION 9. Scope of protection.** A timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a republisher. However, a correction or clarification that is sufficient only under paragraph 3 of subdivision b of subsection 2 of section 6 of this Act does not constitute a correction or clarification made by the person to whom the statement is attributed.

**SECTION 10. Admissibility of evidence of correction or clarification.**

1. The fact of a request for correction or clarification under this Act, the contents of the request, and its acceptance or refusal are not admissible in evidence at trial.
2. The fact that a correction or clarification under this Act was made and the contents of the correction or clarification are not admissible in evidence at trial except in mitigation of damages pursuant to section 5 of this Act. If the fact that a correction or clarification was made or the contents of the correction or clarification are received in evidence, the fact of the request may also be received.
3. The fact of an offer of correction or clarification, or the fact of its refusal, and the contents of the offer are not admissible in evidence at trial.

**SECTION 11. REPEAL.** Section 14-02-08 of the North Dakota Century Code is repealed.

Approved April 5, 1995  
Filed April 6, 1995

# COUNTY JUSTICE COURT

## CHAPTER 333

### HOUSE BILL NO. 1340

(Representatives Kempenich, Huether, Laughlin)  
(Senators Kinnoin, Mutch, Tennefos)

### EVICTIION ACTIONS

AN ACT to create and enact a new subsection to section 33-06-01 of the North Dakota Century Code, relating to maintenance of eviction actions; and to amend and reenact section 33-06-02 of the North Dakota Century Code, relating to service of notice of intention to evict.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new subsection to section 33-06-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

The lessee violates a material term of the written lease agreement between the lessor and lessee.

**SECTION 2. AMENDMENT.** Section 33-06-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**33-06-02. Appearance - Notice of intention to evict - When required - When and how served.** In any action for eviction the time specified in the summons for the appearance of the defendant may not be less than three nor more than fifteen days from the date on which it is issued. In all cases arising under subsections 4, 5, and 6 of section 33-06-01 and section 1 of this Act, three days' written notice of intention to evict must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted. The notice may be served and returned as a summons is served and returned or, if the party cannot be found, then by the sheriff of the county or a process server posting the notice conspicuously upon the premise premises. Service by delivery of a copy of the summons to the defendant in person within the county must be made at least three days before the time fixed for the appearance of the defendant. Service elsewhere or personal service in any other mode must be made at least seven days before the time fixed for the appearance of the defendant.

Approved March 21, 1995  
Filed March 21, 1995

# LABOR AND EMPLOYMENT

## CHAPTER 334

### SENATE BILL NO. 2104

(Senators Redlin, Nething)

#### LABOR COMMISSIONER APPOINTED OFFICE

AN ACT to amend and reenact sections 16.1-11-08, 34-05-01.2, and subsection 2 of section 54-06-01 of the North Dakota Century Code, relating to the appointment of the labor commissioner by the governor; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 16.1-11-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-08.** Reference to party affiliation in petition and affidavit prohibited for certain offices. No reference may be made to a party ballot or to the party affiliation of a candidate in a petition and affidavit filed by or on behalf of a candidate for nomination in the primary election to an elective county office, the office of judge of the supreme court, judge of the district court, ~~commissioner of labor~~, or superintendent of public instruction.

**SECTION 2. AMENDMENT.** Section 34-05-01.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-05-01.2.** Department Labor commissioner to administer department of labor to be administered by commissioner of labor. The Beginning January 1, 1999, the governor shall appoint a labor commissioner to administer the department of labor must be administered by a commissioner of labor who must be elected for a four-year term on a no-party ballot in the year 1966 and every four years thereafter in the same manner as provided for no-party candidates pursuant to title 16.1. Following his election, the term of the commissioner of labor commences on the same day as the terms for other elected state officials. The commissioner of labor shall possess the same qualifications for office as the commissioner of agriculture. The annual salary of the commissioner of labor is forty-nine thousand nine hundred dollars through June 30, 1992, and fifty-one thousand two hundred seventy-two dollars thereafter. The labor commissioner shall serve at the pleasure of the governor.

**SECTION 3. AMENDMENT.** Subsection 2 of section 54-06-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Elected and elective state officers" includes the governor, the lieutenant governor, the attorney general, the secretary of state, the state auditor, the state treasurer, the superintendent of public instruction, the commissioner of agriculture, ~~the commissioner of labor~~, the commissioner of insurance, the tax commissioner, and three public service commissioners.

**SECTION 4. EFFECTIVE DATE.** This Act becomes effective on January 1, 1999, or upon the effective date of a vacancy of the office of commissioner of labor if before January 1, 1999. Notwithstanding section 34-05-01.2, no commissioner of labor may be elected in 1998.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 335

## HOUSE BILL NO. 1254

(Representative Austin)

LABOR COMMISSIONER WAGE STANDARDS,  
EMPLOYMENT, AND INVESTIGATIONS

AN ACT to amend and reenact subsection 3 of section 34-06-03, subsection 3 of section 34-06-05, and section 34-06-09 of the North Dakota Century Code, relating to minimum wage standards adopted by the commissioner of labor, illegal employment under certain conditions, and investigations by the commissioner of labor.

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

SECTION 1. AMENDMENT. Subsection 3 of section 34-06-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Standards of minimum wages for employees in any occupation in this state ~~and what wages are inadequate to supply the necessary cost of living to any such employees and to maintain them in good health.~~

SECTION 2. AMENDMENT. Subsection 3 of section 34-06-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Employees for wages which are ~~inadequate to supply the necessary cost of living and to maintain them in good health~~ less than the state minimum wage.

SECTION 3. AMENDMENT. Section 34-06-09 of the North Dakota Century Code is amended and reenacted as follows:

34-06-09. Conference to consider investigation by commissioner - Members, quorum, report. If, after ~~he has~~ having investigated the matter, the commissioner is of the opinion that any substantial number of employees in any ~~occupation industry~~ are working for unreasonably long hours; ~~or~~ are working under surroundings or conditions detrimental to their health or morals, ~~or are receiving wages inadequate to supply them with the necessary cost of living and to maintain them in good health;~~ he the commissioner may call a conference for the purpose of considering and reporting on such subject as may be submitted to it. The conference must be composed of not more than three representatives of the employers in ~~said occupation~~ that industry, of an equal number of the representatives of the employees in ~~said occupation that industry~~, of not more than three disinterested persons representing the public, and of the commissioner or ~~his~~ the commissioner's representative. The commissioner shall name and appoint all the members of such conference ~~and shall designate the chairman thereof.~~ Two-thirds of the members of any such conference constitute a quorum. The commissioner shall present to such conference all information and evidence in ~~his the commissioner's~~ possession or under the control of ~~his the~~ department of labor which relates to the subject of the inquiry and shall cause to be brought before such conference any witness whose testimony ~~he the commissioner~~ deems material thereto. After completing its consideration of any inquiry submitted to it by the commissioner, such conference



shall make and transmit to the commissioner a report containing its findings and recommendations on the subject.

Approved March 31, 1995

Filed March 31, 1995

**CHAPTER 336****HOUSE BILL NO. 1269**

(Representative Poolman)  
(Senator Langley)

**LABOR CONFERENCE REPORT NOTICES**

AN ACT to amend and reenact section 34-06-11 of the North Dakota Century Code, relating to posting of notices by the commissioner of labor.

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

**SECTION 1. AMENDMENT.** Section 34-06-11 of the North Dakota Century Code is amended and reenacted as follows:

**34-06-11. Consideration of report by commissioner - Hearing upon approval.** Upon the receipt of any report from any conference held as provided in section 34-06-09, the commissioner shall consider and review the recommendations contained in the report, and ~~he~~ may approve or disapprove any of such recommendations. The commissioner may resubmit to the same conference or to any new conference any subject covered by any recommendations which ~~he~~ the commissioner has disapproved. ~~If the commissioner approves any recommendations contained in any such report, he shall publish a notice in at least two newspapers of general circulation in this state at least once each week for four successive weeks stating that a public hearing will be had thereon and specifying the date and place thereof and that all persons in favor of or opposed to the recommendations may appear and be heard.~~

Approved March 24, 1995  
Filed March 27, 1995

**CHAPTER 337****HOUSE BILL NO. 1188**  
(Representative Clark)**LABOR COMMISSIONER HOURS ORDERS**

AN ACT to amend and reenact section 34-06-12 of the North Dakota Century Code, relating to orders issued by the commissioner of labor.

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

**SECTION 1. AMENDMENT.** Section 34-06-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-06-12. Order issued by commissioner - Effective date - Posting.** After the hearing provided for in section 34-06-11 has been held, the commissioner may make and render such order as may be necessary and proper to adopt such recommendations and to carry the same into effect and to require all employers in the occupation affected thereby to observe and comply with such recommendations and order. The order made by the commissioner becomes effective on the sixtieth day following its rendition. After the order has become effective, no employer may violate or disregard the terms or provisions thereof or employ any employee in any occupation covered thereby for longer hours or under different conditions or at a lower wage scale than are authorized therein. All effective orders must be reviewed annually. A copy of such order must be mailed by the commissioner to every employer affected thereby, and each such employer shall keep a copy of the order posted in a conspicuous place in a commonly frequented area of the employer's establishment in which employees work. ~~No order of the commissioner may permit the employment of any employee for more hours per day or week than the maximum fixed by this chapter.~~

Approved March 7, 1995  
Filed March 7, 1995

## CHAPTER 338

## SENATE BILL NO. 2252

(Senators Holmberg, Nalewaja)

## DISCRIMINATORY EMPLOYMENT PRACTICES

AN ACT to amend and reenact section 34-06.1-03 of the North Dakota Century Code, relating to the prohibition of discriminatory employment practices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**34-06.1-03. Prohibition of discrimination.** No employer may discriminate between employees in the same establishment on the basis of ~~sex~~ gender, by paying wages to any employee in any occupation in this state at a rate less than the rate at which ~~he~~ the employer pays any employee of the opposite ~~sex~~ gender for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility; ~~but not to physical strength~~. Differentials ~~which that~~ are paid pursuant to established seniority systems, job descriptive systems, merit increase systems, or executive training programs, and which do not discriminate on the basis of ~~sex~~ gender, are not within this prohibition. An employer who is paying a wage differential in violation of this chapter may not, in order to comply with ~~it~~ this chapter, reduce the wage rates of any employee. No person may cause or attempt to cause an employer to discriminate against any employee in violation of this chapter. No employer may discharge or discriminate against any employee by reason of any action taken by ~~such~~ the employee to invoke or assist in any manner the enforcement of this chapter, except when proven that the act of ~~such~~ the employee is fraudulent.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 339****HOUSE BILL NO. 1388**

(Representatives Boehm, Coats, Monson)

**SCHOOL-TO-WORK PROGRAM EXEMPTION**

AN ACT to amend and reenact sections 34-07-02 and 34-07-15 of the North Dakota Century Code, relating to exempting school-to-work programs from child labor laws.

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

**SECTION 1. AMENDMENT.** Section 34-07-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-07-02. Certificate of employment required - Inspection - List of minors employed to be kept.** No minor fourteen or fifteen years of age may be employed or permitted to work in any occupation except a school-to-work transition program approved by the commissioner of labor at the request of the North Dakota school-to-work transition team, farm labor, domestic service, or in the employment of, and under the direct supervision of, the minor's parent or guardian unless the minor has graduated from high school or is exempt from compulsory school attendance or, unless the minor has an employment certificate signed by the minor's parent or guardian in accordance with the provisions of this chapter. Any person, firm, corporation, or limited liability company employing a minor must keep on file a completed employment certificate, for each minor, as provided in this chapter. The employment certificate must be accessible to inspection by the principal of the school which the minor attends, a principal in the municipality in which the minor resides, or the commissioner of labor or the commissioner's agent or representative.

**SECTION 2. AMENDMENT.** Section 34-07-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-07-15. Maximum hours of labor of minors fourteen or fifteen years of age - Notice to be posted.** No minor fourteen or fifteen years of age may be employed or permitted to work at any occupation, except in a school-to-work transition program approved by the commissioner of labor at the request of the North Dakota school-to-work transition team, domestic services and at farm labor, before the hour of seven a.m. nor after the hour of seven p.m., except that such hours are seven a.m. to nine p.m. from June first through labor day, nor more than eighteen hours during schoolweeks, nor more than three hours on schooldays, nor more than forty hours during nonschoolweeks, nor more than eight hours on nonschooldays. A schoolweek is considered to be any week Monday through Sunday in which a youth is required to be in attendance, for any period of time, four or more days. Provided, however, that the limitations restricting hours of work during schoolweeks and schooldays do not apply to minors who are not attending school

because they are excepted from compulsory school attendance by the provisions of chapter 15-34.1. Every employer shall post in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours allowed for dinner or other meals. The printed form of such notice must be furnished by the commissioner of labor. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 340****SENATE BILL NO. 2433**

(Senators Krebsbach, Solberg)  
(Representative Poolman)

**UNFAIR LABOR PRACTICES**

AN ACT to amend and reenact section 34-12-03 of the North Dakota Century Code, relating to unfair labor practices.

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

**SECTION 1. AMENDMENT.** Section 34-12-03 of the North Dakota Century Code is amended and reenacted as follows:

**34-12-03. Unfair labor practices.**

1. It is an unfair labor practice for any employer:
  - a. To interfere with, restrain, or coerce employees in the exercise of the ~~right~~ rights guaranteed in section 34-12-02.
  - b. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. This may not be construed to prohibit an employer from conferring with employees or their bona fide representatives and including, but not by way of limitation, explaining the position of management in connection with the problems of the employer during working hours without the loss of pay.
  - c. By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.
  - d. To discharge or otherwise discriminate against an employee because ~~he~~ the employee has filed charges or given testimony under this chapter.
  - e. To refuse to bargain collectively with the representatives of ~~his~~ the employer's employees, subject to ~~the provisions of~~ section 34-12-02.
2. It is an unfair labor practice for a labor organization or its agents:
  - a. To restrain or coerce employees in the exercise of rights guaranteed in section 34-12-02, provided that a labor organization may prescribe its own rules for the acquisition and maintenance of membership in said labor organization.
  - b. To cause or attempt to cause an employer to discriminate or restrain or coerce employees in the exercise of rights set forth in section 34-12-02.

- c. To restrain or coerce an employer in the selection of ~~his~~ the employer's representatives or to refuse to bargain with an employer if the labor organization or its agent is the representative of ~~his~~ the employer's employees.
  - d. To force or attempt to force an employer or self-employed person to join any organization.
  - e. To engage in, or to induce or encourage any employee to engage in, a strike or a refusal in the course of ~~his~~ the employee's employment to use or work on any goods, articles, materials or commodities, or to perform any services, or to threaten, coerce or restrain any person for the purpose of forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any employer to recognize or bargain with a labor organization as the representative of ~~his~~ the employer's employees unless ~~such~~ the labor organization has been certified as the representative of ~~his~~ the employer's employees under the provisions of section 34-12-05; but nothing in this subsection may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing, and nothing contained in this subsection may be construed to make unlawful a refusal by any person to enter upon the premises of any employer, other than ~~his~~ the person's own employer, if the employees of ~~such~~ the other employer are engaged in a lawful strike.
  - f. To require of employees as a condition for membership the payment of fees found by the commissioner to be excessive or discriminatory.
  - g. To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.
  - h. To make, circulate, or cause to be circulated, a black list.
  - i. To coerce or intimidate an employee in the enjoyment of ~~his~~ the employee's legal rights, or to intimidate ~~his~~ the employee's family or any member thereof, picket ~~his~~ the employee's domicile, or injure the person or property of ~~such~~ the employee or ~~his~~ the employee's family or of any member thereof.
  - j. To hinder or prevent by unlawful picketing, threats, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
3. It is unfair labor practice for a person:
- a. To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 34-12-02.



- b. To coerce or intimidate an employee in the enjoyment of the employee's legal rights, or to intimidate the employee's family or any member thereof, picket the employee's domicile, or injure the person or property of the employee, the employee's family, or any member thereof.
- c. To hinder or prevent by unlawful picketing, threats, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or exit from any place of employment, or to obstruct or interfere with free and uninterrupted use of entrances, public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
- 4. The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, ~~shall~~ is not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if ~~such~~ the expression contains no threat of reprisal or force or promise of benefit.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 341****HOUSE BILL NO. 1469**

(Representative Clark)

**EMPLOYMENT AGENCY LICENSING AND  
CONTRACTS**

AN ACT to amend and reenact sections 34-13-03, 34-13-06, 34-13-12, 34-13-13, and 34-13-13.1 of the North Dakota Century Code, relating to license issuance and revocation for employment agents, form and contents of licenses for employment agencies, schedule of charges posted on receipts given by employment agencies, contracts with applicants for employment, and definitions of temporary and permanent employment for the purpose of a service charge refund; and to repeal sections 34-13-11 and 34-13-14 of the North Dakota Century Code, relating to classes of employment agency licenses and the licensing of theatrical agencies.

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

**SECTION 1. AMENDMENT.** Section 34-13-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-13-03. License application - Schedule of fees - License issuance and revocation.** ~~On or before July first of each year~~ Annually, every applicant for a license shall file with the commissioner a written application stating the name and address of the applicant, ~~the kind of license desired~~, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application must also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license, and must be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation, and must be signed and sworn to by the president and treasurer thereof. If the applicant is a limited liability company, the application must state the names and addresses of the managers and governors of the limited liability company and must be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application must also state the names and addresses of all partners therein, and must be signed and sworn to by all of them. The application must also state whether or not the applicant is, at the time of making application, or has at any previous time been, engaged or interested in, or employed by anyone engaged in, the business of conducting an employment agency, either in this state or any other, and if so, when and where. The application must also give as reference the names and addresses of at least three persons of reputed business or professional integrity, located ~~in within the city or town where such applicant intends to conduct his business state~~. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commissioner a schedule of the fees or charges to be collected by such employment agent for any services rendered, together with all rules and regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commissioner. It is

unlawful for any employment agent to charge, demand, collect, or receive a greater compensation for any service performed by him than is specified in such schedule filed with the commissioner.

~~It is the duty of the The commissioner; and he has the power, jurisdiction, and authority to may issue licenses a license to an employment agents, agent and to refuse to issue such a license whenever if, after due investigation, he the commissioner finds that the character of the applicant makes him the applicant unfit to be an employment agent, or when the premises for conducting the business of an employment agent are found upon investigation to be unfit for such use. Any such license granted by the The commissioner may also be revoked by him revoke a license upon due notice to the holder of said the license, and upon due cause shown. Failure to comply with the duties, terms, conditions, or provisions of this chapter, or any lawful orders of the commissioner is deemed due cause to revoke such a license.~~

**SECTION 2. AMENDMENT.** Section 34-13-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-13-06. Form and contents of license.** After an application for a license has been granted, a license must be issued to the applicant which must state the name of the employment agent, and, if a corporation, the names of the officers, if a limited liability company, the names of the managers, if a partnership, the names of the partners, the location of the office where the business is to be conducted, and the name of the person who is to be charged with the general management of the business. The license must also be numbered and dated ~~and state whether it is a class one, class two, or class three license, as provided in section 34-13-11.~~

**SECTION 3. AMENDMENT.** Section 34-13-12 of the North Dakota Century Code is amended and reenacted as follows:

**34-13-12. Schedule of charges posted and printed on receipts - Sections of law posted - Information given to applicant for employment.** Every employment agent ~~licensed under a class one license possessing a valid license~~ shall post in a conspicuous place in ~~every a~~ room used for business purposes in the employment office ~~conducted by him, and shall have printed on the back of every receipt given and which is open to the public,~~ a schedule showing the amount of the service charges to be made to either employees, employers, or both. ~~In no case may the~~ The amount collected may not exceed the schedule of charges so indicated.

~~Every A licensed~~ employment agent ~~licensed under a class one license~~ shall post in a conspicuous place in ~~every a~~ room used for business purposes in the employment office ~~conducted by him,~~ a copy of sections 34-13-12 and 34-13-15, ~~to be furnished the employment agent provided by the commissioner.~~

No employment agent holding a ~~class one~~ license may direct any applicant to apply for employment at any place outside of the office of such employment agent without first giving to such applicant, in written form, the name and address of the employment agent, the name of the applicant, the name and address of the person to whom the applicant is referred, and the kind of employment supposed to be obtainable at such place. Nothing herein may be construed to prohibit an employment agent from directing an applicant by telephone to apply for employment, but such telephone message must be confirmed in writing by the employment agent within twenty-four hours after the telephone conversation, and a carbon copy of such confirmation must be kept on file at the place of business of the employment agent for a period of one year.

**SECTION 4. AMENDMENT.** Section 34-13-13 of the North Dakota Century Code is amended and reenacted as follows:

**34-13-13. Contract with applicant for employment.** Every licensed employment agent ~~licensed under a class two license~~ shall contract, in writing, with every applicant for employment for services to be rendered to the applicant by the employment agent, which contract must contain the date, the name and address of the employment agency, the name of the employment agent, the service charge to be made to the applicant, and the time and method of payments, and, on either the face or back of the contract, must appear the definition of "accept", "method of payment", "~~temporary position~~", and "charge for permanent position which ~~proves to be temporary ends within ninety calendar days~~".

**SECTION 5. AMENDMENT.** Section 34-13-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**34-13-13.1. "Temporary employment" and "permanent employment" defined - Service charge refund - ~~Class one and class two licensees' contracts~~ Contracts** and fees approved by commissioner - Cause of action by employee.

- ~~1-~~ **1.** For the purposes of this section, temporary employment is employment for three months or less, and permanent employment is employment for more than three months.
- ~~2-~~ **1.** If an employment position terminates or the employee is ~~otherwise released fired or laid off~~ before the end of the temporary employment period ninety calendar days, the employee shall receive a refund of all service charges paid in excess of twenty percent of the gross wages actually received prior to termination or release. If the employee quits the job voluntarily, the refund does not apply. Nothing contained in this section restricts an agency from receiving full-service charges at the time of the referral, subject to the refund herein provided.
- ~~3-~~ **2.** This section applies to all ~~class one and class two~~ licensees as defined in ~~section 34-13-11~~. Every ~~class one and class two~~ licensee shall submit copies of all contracts and fee schedules used by such agency or agent to the commissioner of labor for approval. No contract or fee between a ~~class one and class two~~ licensee and an employer or an employee is valid without the commissioner's approval. In approving or disapproving such contracts and fees, the commissioner shall issue a written determination. This determination is subject to review and appeal under chapter 28-32.
- ~~4-~~ **3.** This section does not apply to contracts wherein the service charge does not exceed one hundred dollars.
- ~~5-~~ **4.** Any employee who is damaged by a violation of this section is entitled to receive from the licensee the entire amount of service charges he has paid the licensee.

**SECTION 6. REPEAL.** Sections 34-13-11 and 34-13-14 of the North Dakota Century Code are repealed.

Approved March 28, 1995  
Filed March 28, 1995

**CHAPTER 342****HOUSE BILL NO. 1083**

(Representatives Gorder, Svedjan)

(At the request of the Department of Human Services)

**WAGE PAYMENTS BY EMPLOYERS**

AN ACT to amend and reenact section 34-14-02 of the North Dakota Century Code, relating to the time of payment of wages by employers.

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

**SECTION 1. AMENDMENT.** Section 34-14-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-14-02. ~~Semimonthly or agreed~~ Agreed payday - Direct deposit.** Every employer shall pay all wages due to ~~his~~ employees ~~at least twice each calendar month, or at least once each calendar month~~ on regular agreed paydays designated in advance by the employer, in lawful money of the United States or with checks on banks convenient to the place of employment. If an employee participates in a direct deposit program, that employee's employer shall deposit the employee's wages into the financial institution of the employee's choice. An employer may not require an employee to directly deposit the employee's wages into a financial institution.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 343

HOUSE BILL NO. 1235  
(Representatives Keiser, Tollefson)

## WAGE PAYMENTS TO SEPARATED EMPLOYEES

AN ACT to amend and reenact subsection 1 of section 34-14-03 of the North Dakota Century Code, relating to employees who are separated from payroll before payday.

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

SECTION 1. AMENDMENT. Subsection 1 of section 34-14-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever an employer discharges or terminates an employee, the unpaid wages or compensation of that employee become due immediately, and the employer shall pay those wages to the employee within ~~twenty-four hours of the time of separation at the employer's place of business; or shall pay those wages within~~ fifteen days or at the next regular pay period, whichever occurs first, by certified mail at an address designated by the employee. If the employer fails to pay ~~such~~ the wages within the stated time, the employee may charge and collect wages in the sum agreed upon in the contract of employment for each day ~~his~~ the employer is in default until ~~he~~ the employer has paid in full, without rendering any service therefor, except the employee shall cease to draw wages or salary thirty days after such default.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 344

### HOUSE BILL NO. 1279

(Representatives Kelsch, Austin, Carlson, Stenehjelm)  
(Senators Krebsbach, Traynor)

## WAGE AND COLLECTION RECIPROCAL AGREEMENTS

AN ACT to amend and reenact sections 34-14-11, 34-14-12, and 34-14-13 of the North Dakota Century Code, relating to reciprocal agreements between states for collection of wages and collection actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 34-14-11 of the North Dakota Century Code is amended and reenacted as follows:

**34-14-11. Reciprocal agreements for collection of wages.** The commissioner of labor may enter into reciprocal agreements with the labor department or corresponding agency of any other state, nation, or country or with the person, board, officer, or commission authorized to act for and on behalf of such the department or agency, for the collection in such the other state, nation, or country of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor.

**SECTION 2. AMENDMENT.** Section 34-14-12 of the North Dakota Century Code is amended and reenacted as follows:

**34-14-12. Actions in other states, nations, or countries for collection of claims - Assignments for collection.** The department of labor may, to the extent provided for by any reciprocal agreement entered into pursuant to section 34-14-11, or by the laws of any other state, nation, or country, maintain actions in the courts of such the other state, nation, or country for the collection of such claims for wages, judgments, and other demands and may assign such the claims, judgments, and demands to the labor department or agency of such the other state, nation, or country for collection to the extent that the same may be permitted or provided for by the laws of such the state, nation, or country or by reciprocal agreement.

**SECTION 3. AMENDMENT.** Section 34-14-13 of the North Dakota Century Code is amended and reenacted as follows:

**34-14-13. Claims assigned by other states, nations, or countries - Actions - Collection.** The department of labor may, upon the written request of the labor department or other corresponding agency of any other state, nation, or country or of any person, board, officer, or commission of such the state, nation, or country authorized to act for and on behalf of such the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in such the other state, nation, or country in the same manner and to the same extent that such the actions by the department of

labor are authorized when arising in this state; provided, however, that ~~such~~ the actions may be commenced and maintained only in those cases where ~~such~~ the other state, nation, or country by appropriate legislation or by reciprocal agreement extends a like comity to cases arising in this state.

Approved March 24, 1995

Filed March 27, 1995



# LIENS

## CHAPTER 345

### SENATE BILL NO. 2500

(Senators Mushik, Langley, Naaden, Streibel)

## MORTGAGE SATISFACTION AND DISCHARGE FILING

AN ACT to amend and reenact sections 35-01-27 and 35-03-16 of the North Dakota Century Code, relating to satisfaction and discharge of mortgages on real property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 35-01-27 of the North Dakota Century Code is amended and reenacted as follows:

**35-01-27. Discharge of mortgage or lien on real property must be furnished on demand - Penalty.** When any mortgage or other lien upon real property has been satisfied; ~~the owner thereof~~, immediately upon demand of the owner of the property, the owners of the mortgage or other lien shall execute and deliver to the owner a certificate of discharge duly acknowledged, or and cause a satisfaction of record to be entered. The fee for filing the satisfaction must be paid by the owner of the property or added to the debt paid by the owner of the property. Any mortgagee or owner of a mortgage or lien who refuses to execute or deliver a discharge or to enter a satisfaction as herein provided is liable to the owner of the property for all damages sustained by reason of such refusal and exemplary damages of one hundred dollars.

**SECTION 2. AMENDMENT.** Section 35-03-16 of the North Dakota Century Code is amended and reenacted as follows:

**35-03-16. Satisfaction of mortgage - Discharge - Form - Power of attorney.** A recorded mortgage must be discharged upon the record by the register of deeds having custody thereof on the presentation of a certificate of discharge signed by the mortgagee, his executors, administrators, guardians, trustees, assigns, personal representatives, or special administrators appointed for that purpose, properly acknowledged or proved and certified as prescribed by chapter 47-19. The certificate of discharge must contain a brief description of the mortgage and must state that the mortgage has been paid in full or otherwise satisfied and discharged and that the officer is authorized to discharge the same of record. Any person executing a certificate of discharge as a personal representative of the mortgagee first shall file and have recorded in the office of the register of deeds where the mortgage is recorded, a power of attorney showing his authority to discharge mortgages in behalf of the mortgagee and in his name. The mortgagee shall present the certificate of discharge to the register of deeds for recording in the county in which the property is located within thirty days after the certificate of discharge is signed. The mortgagee may add the amount of the recording fee to the balance of the debt paid by the mortgagor. A certificate of the satisfaction of a mortgage may be made in substantially the following form:

This certifies that a certain mortgage executed by \_\_\_\_\_ of \_\_\_\_\_, mortgagor, to \_\_\_\_\_ of \_\_\_\_\_, mortgagee, dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, upon the \_\_\_\_\_ (here describe the property covered by the mortgage) and recorded in the office of the register of deeds in and for the county of \_\_\_\_\_ and state of North Dakota, in book \_\_\_\_\_ of mortgages on page \_\_\_\_\_, is paid and satisfied; and \_\_\_\_\_ hereby authorize and require said register of deeds to discharge the same of record in his office.

Witness \_\_\_\_\_ hand this \_\_\_\_\_ day of \_\_\_\_\_ A.D.  
\_\_\_\_\_ (Acknowledgment).

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 346

### HOUSE BILL NO. 1383 (Representatives Bateman, Boehm)

## AGRICULTURE LIEN AMENDMENTS AND FEES

AN ACT to create and enact two new sections to chapter 35-17, two new sections to chapter 35-30, and two new sections to chapter 35-31 of the North Dakota Century Code, relating to amendment of and fees for agister's liens, agricultural processor's liens, and agricultural supplier's liens.

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

**SECTION 1.** Two new sections to chapter 35-17 of the North Dakota Century Code are created and enacted as follows:

**Amendment of lien.** A lienholder may file an amendment to correct the social security or internal revenue service taxpayer identification number of the debtor, to correct the spelling of the debtor's or lienholder's name, or to correct or change the address of the debtor or lienholder. The secretary of state shall prescribe a form that may be used to amend or assign the agister's lien that has been filed pursuant to section 35-17-04. The amendment or assignment of a lien does not affect the priority of the lien.

**Fees.** The fee for filing an agister's lien with the secretary of state or the county register of deeds is five dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agister's lien is five dollars.

**SECTION 2.** Two new sections to chapter 35-30 of the North Dakota Century Code are created and enacted as follows:

**Amendment of lien.** A lienholder may file an amendment to correct the social security or internal revenue service taxpayer identification number of the debtor, to correct the spelling of the debtor's or lienholder's name, or to correct or change the address of the debtor or lienholder. The secretary of state shall prescribe a form that may be used to amend or assign the agricultural processor's lien that has been filed pursuant to section 35-30-02. The amendment or assignment of a lien does not affect the priority of the lien.

**Fees.** The fee for filing an agricultural processor's lien with the secretary of state or the county register of deeds is five dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural processor's lien is five dollars.

**SECTION 3.** Two new sections to chapter 35-31 of the North Dakota Century Code are created and enacted as follows:

**Amendment of lien.** A lienholder may file an amendment to correct the social security or internal revenue service taxpayer identification number of the debtor, to correct the spelling of the debtor's or lienholder's name, or to correct or change the

address of the debtor or lienholder. The secretary of state shall prescribe a form that may be used to amend or assign the agricultural supplier's lien that has been filed pursuant to section 35-31-02. The amendment or assignment of a lien does not affect the priority of the lien.

**Fees.** The fee for filing an agricultural supplier's lien with the secretary of state or the county register of deeds is five dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural supplier's lien is five dollars.

Approved March 10, 1995

Filed March 13, 1995

# LIVESTOCK

## CHAPTER 347

### SENATE BILL NO. 2505

(Senators Naaden, Solberg)

## BOARD OF ANIMAL HEALTH DUTIES TRANSFERRED

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to duties and reports of the state board of animal health; to amend and reenact subsection 1 of section 4-13.2-03, section 4-13.2-04, subsection 43 of section 20.1-01-02, sections 36-01-00.1, 36-01-01, 36-01-03, 36-01-04, 36-01-05, 36-01-06, 36-01-07, 36-01-08, 36-01-10, 36-01-12.1, 36-01-13, 36-01-15, 36-01-17, 36-01-18, 36-01-19, 36-01-29, 36-01-30, 36-05-03, 36-05-09, 36-05-10, 36-05-13, 36-07-01, 36-07-02, 36-07-03, 36-07-09, 36-07-10, 36-14-03, 36-14-05, 36-14-06, 36-14-07, 36-14-09, 36-14-10, 36-14-12, 36-14-15, subsection 1 of section 36-14-19, sections 36-14.1-01, 36-14.1-02, 36-14.1-03, 36-14.1-04, 36-14.1-05, 36-14.1-07, 36-15-09, 36-15-14, 36-15-19, 36-21.1-01, subsection 2 of section 36-21.1-06, sections 36-21.1-11, and 36-21.1-12 of the North Dakota Century Code, relating to transferring certain responsibility from the board of animal health to the commissioner of agriculture and to the membership of the board of animal health; to repeal section 36-01-11 of the North Dakota Century Code, relating to reports by the board of animal health to the office of management and budget and the governor; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 4-13.2-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~Improve~~ Work toward improving poultry breeding and to cooperate with the board of animal health in controlling and eradicating communicable diseases of poultry.

**SECTION 2. AMENDMENT.** Section 4-13.2-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-13.2-04. Poultry advisory board - How constituted.** The advisory board consists of the ~~executive officer of the board of animal health~~ state veterinarian; the chairman of the animal science department of North Dakota state university of agriculture and applied science; and three members recommended by the poultry industry who must be one representative from the egg industry, one from the turkey industry, and one from the hatchery industry. The appointed members shall serve: one for a term to expire July 1, 1976; one for a term to expire July 1, 1977; and one for a term to expire July 1, 1979. On or before July first in each year when a term is to expire, a member must be appointed to serve for a term of five years. Members of the advisory board must be reimbursed for mileage and travel as

specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings.

<sup>176</sup> **SECTION 3. AMENDMENT.** Subsection 43 of section 20.1-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43. "Wildlife" means any member of the animal kingdom including any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. Wildlife does not include domestic animals as defined by ~~the board of animal health~~ section 36-01-00.1, or birds or animals held in private ownership.

**SECTION 4. AMENDMENT.** Section 36-01-00.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-00.1. Definitions.** In this chapter unless the context or subject matter otherwise requires:

1. "Board" means the state board of animal health.
2. "Commissioner" means the commissioner of agriculture.
3. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, llama, alpaca, or swine.
- ~~3-~~ 4. "Nontraditional livestock" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries or an animal that is physically altered to limit movement and facilitate capture.

**SECTION 5. AMENDMENT.** Section 36-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-01. State board of animal health - Appointment - Terms - Qualifications.**

1. The state board of animal health consists of ~~seven~~ nine members ~~appointed by the~~.
2. The governor shall appoint seven members for terms of seven years each with ~~their~~ the terms of office ~~so~~ so arranged ~~so~~ that one term; ~~and only one~~; expires on the first day of August in each year. ~~No person may be appointed~~ The governor may not appoint any person to more than two 7-year terms on the board. Each member of ~~such~~ the board must be a qualified elector of this state. Each member of the board, immediately after ~~his~~ appointment shall take the oath of office required of civil

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<sup>176</sup> Section 20.1-01-02 was also amended by section 1 of House Bill No. 1375, chapter 237.

officers. One member of ~~said the~~ board must be a person actively engaged and financially interested in the commercial beef cattle industry and shall represent ~~said that~~ industry on ~~said the~~ board; one member of ~~said the~~ board must be a person actively engaged and financially interested in the registered purebred beef cattle industry and shall represent ~~said that~~ industry on ~~said the~~ board; one member of ~~said the~~ board must be a person actively engaged and financially interested in the dairy cattle industry and shall represent ~~said that~~ industry on ~~said the~~ board; one member of ~~said the~~ board must be a person actively engaged and financially interested in the swine industry and shall represent ~~said that~~ industry on ~~said the~~ board; one member of ~~said the~~ board must be a person actively engaged and financially interested in the sheep industry and shall represent ~~said that~~ industry on ~~said the~~ board; and two members of ~~said the~~ board must be competent veterinarians who are graduates of a veterinary course in a recognized college or university. Vacancies occurring ~~prior to~~ before the expiration of the terms of ~~office these seven members~~ must be filled by appointment by the governor and must be for the balance of the unexpired term. Recommendations for appointment of members to ~~said board as constituted~~ under this ~~section subsection~~ may be made to the governor by the following associations for the following stated industries; ~~to wit:~~ by the North Dakota stockmen's association for the members representing commercial beef cattle, by the various registered purebred beef cattle associations for the member representing the registered purebred beef cattle, by the various dairy breed associations for the member representing dairy cattle, by the North Dakota swine breeders' association for the member representing swine, by the North Dakota wool growers' association for the member representing sheep, by the state veterinary medical association for the two veterinarian members, and by such other associations within this state representing livestock industries as the governor may permit. Two recommendations must be submitted for each office to be filled.

3. The chairman of the legislative council shall appoint two members for terms of two years, beginning August 1, 1995. One appointee must be a member of the house of representatives and one appointee must be a member of the senate. The appointees may not represent the same political party.

SECTION 6. AMENDMENT. Section 36-01-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-03. Officers of board - Election - Qualifications of executive officer. The ~~state board of animal health~~ shall elect a president and a secretary from among its members ~~and an executive officer who may not be a member of the board.~~ The ~~executive officer must be a competent and skilled veterinarian and must be a graduate of the course in veterinary medicine and surgery offered by a recognized college or university~~ commissioner shall provide clerical services to the board.

SECTION 7. AMENDMENT. Section 36-01-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-04. Compensation and expenses of members of board. Each member of the ~~state board of animal health~~ shall receive as compensation for ~~his~~ services the sum of fifty dollars per day for each day employed, and ~~his~~ actual expenses incurred in attending the meetings of the board. ~~Such~~ The sum must be paid out of the state

treasury upon vouchers of the board duly certified by the executive officer thereof commissioner.

**SECTION 8. AMENDMENT.** Section 36-01-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-05. Executive officer - Salary - Bond State veterinarian - Appointment.** The executive officer of the state board of animal health shall receive for his services such annual salary as must be fixed by the board within the limits of the appropriations made to the board by the legislative assembly. Before entering upon the discharge of his duties, the executive officer shall give a bond in the sum of five thousand dollars, to the state of North Dakota, conditioned for the proper discharge of his duties, and shall take the oath of office required of civil officers commissioner shall, with the consent of the board, appoint the state veterinarian and deputy state veterinarian. However, the commissioner's first appointments to the positions of state veterinarian and deputy state veterinarian must be the persons serving in those capacities for the board of animal health on the day before the effective date of this Act. The state veterinarian and deputy state veterinarian must be competent and skilled veterinarians and graduates of a veterinary medicine and surgery course at a recognized college or university. The commissioner may remove the state veterinarian or deputy state veterinarian for cause. At the request of the board, the commissioner shall deputize persons licensed to practice veterinary medicine in this state as assistant state veterinarians. Deputized persons shall serve during periods of emergency and only for the time period determined by the board.

**SECTION 9. AMENDMENT.** Section 36-01-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-06. Executive officer to act as state State veterinarian - Duties.** ~~The executive officer of the state board of animal health shall act as the state veterinarian and shall:~~

1. Ascertain, by personal examination or through reports from other authorized representatives or agents of the ~~board~~ commissioner, all information which can be obtained regarding the existence of contagious, infectious, and epizootic diseases of animals.
2. Execute all orders and rules made by the board.
3. Execute all duties prescribed for the state veterinarian in title 36 and all duties and responsibilities otherwise authorized by the board that are necessary and proper in order to accomplish the business of the board of animal health and ~~to~~ carry into effect the purposes of this title 36.
4. Present at the meetings of the board a detailed report of all matters connected with the work of the state veterinarian and authorized representatives of the board during the time since the last meeting.

**SECTION 10. AMENDMENT.** Section 36-01-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-07. Bacteriologist and consulting veterinarian of board - Duties - Compensation.** The professor of veterinary science of the North Dakota state university of agriculture and applied science shall act as bacteriologist and consulting veterinarian to the ~~state board of animal health~~. ~~He~~ The bacteriologist shall make bacteriological or pathological examinations of all diseased animals or portions



thereof, or of such material as may be forwarded to ~~him~~ the bacteriologist by the board or ~~its~~ the commissioner's duly authorized agents. ~~He~~ The bacteriologist shall furnish material for the diagnosis of contagious diseases and instruction as to its use. For ~~his~~ services, the bacteriologist ~~shall~~ is entitled to receive such compensation as the ~~board~~ commissioner may deem proper, which must be paid out of the fund appropriated for the use of the ~~board~~ commissioner.

**SECTION 11. AMENDMENT.** Section 36-01-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-08. Duties of board - Rules - Fees.** The board shall protect the health of the domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. Any matter relating to the health and welfare of domestic animals and nontraditional livestock and not specifically assigned by statute to another entity is deemed to be within the authority of the board. The board may make rules ~~for the conduct of its business~~ and to carry into effect the purposes of this chapter and other duties prescribed in this title. The ~~board~~ commissioner shall collect six cents for each brucellosis tag and each identification tag, and eight dollars for each health book ~~it~~ the commissioner distributes. The fees collected by the ~~board~~ commissioner must be deposited in the state general fund.

**SECTION 12.** A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Duties - Evaluations - Report. The board shall conduct performance evaluations of the state veterinarian and any assistant state veterinarians; review the short-term and the long-term role and mission of the board and its employees; review alternatives for the enhancement of, and the efficient delivery of, services provided by the board and its employees; and evaluate the consolidation and cooperation with the department of agriculture. The board shall report to the governor and the legislative council before September 1, 1996, and each year thereafter.

**SECTION 13. AMENDMENT.** Section 36-01-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-10.** Agents and assistants may be employed by ~~board~~ commissioner - Granting of authority to United States government inspectors. The ~~state board of animal health~~ commissioner may employ ~~such~~ officers, agents, or assistants ~~as it may deem necessary~~ to carry out ~~the purposes of this chapter~~, at a compensation to be fixed ~~by the board~~ within the limits of legislative appropriations ~~made to the board by the legislative assembly.~~ The ~~board~~ commissioner may grant to the inspectors of the United States department of agriculture the same authority as is possessed by agents of the ~~board~~, ~~and when such inspectors are engaged in work by the direction or at the request of the board they may not receive compensation from the state or be required to give bond thereto~~ commissioner.

**SECTION 14. AMENDMENT.** Section 36-01-12.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-12.1. Fund transfer for control of diseases.** The ~~board of animal health commissioner~~ may use any ~~of the~~ moneys appropriated to it ~~the commissioner~~ for the control of animal diseases, for the rapid arrest and eradication of foot-and-mouth disease, rinderpest, contagious pleuropneumonia, or any other highly contagious or infectious animal plagues for which purpose adequate funds are not otherwise available.

**SECTION 15. AMENDMENT.** Section 36-01-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-13. Diseased animal to be reported to board.** Any person who discovers, suspects, or has reason to believe that any domestic animal or nontraditional livestock belonging to that person or belonging to any other person, is affected by any contagious disease, shall report ~~such~~ that knowledge, suspicion, or belief to:

1. ~~The board or any member of the board;~~
2. The state veterinarian or any other agent or representative of the ~~board commissioner;~~ or
- 3- 2. Any law enforcement officer of the county or city in which the animal is present. If a report is made to a law enforcement officer under this subsection, the officer shall report the facts immediately to the ~~board, commissioner or the state veterinarian, or another agent or representative of the board~~ and failure to do so constitutes a violation of this chapter.

**SECTION 16. AMENDMENT.** Section 36-01-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-15. Expense of experts - How paid.** If at least two of the experts declare that the animal involved is free from any contagious or infectious disease, the expense of the consultation must be paid by the ~~state board of animal health commissioner.~~ If at least two of such experts declare that such animal is affected with a contagious or infectious disease, the expenses incurred in the consultation must be paid by the person making the protest.

**SECTION 17. AMENDMENT.** Section 36-01-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-17. Oaths and examinations.** The board, any member of the board, the state veterinarian, or ~~any authorized agent or representative of the board commissioner~~ may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals or nontraditional livestock. For this purpose, the board, members of the board, the state veterinarian, ~~and any authorized agent or representative of or the board commissioner,~~ may take depositions, compel witnesses to attend and testify, and administer oaths. Such witnesses are entitled to receive the same fees for attendance and travel as witnesses before the district courts. The ~~board commissioner~~ shall pay the fees from ~~moneys appropriated to it~~ legislative appropriations.

**SECTION 18. AMENDMENT.** Section 36-01-18 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-18. Inspection of livestock in transit - Penalty.** The state veterinarian and authorized agents and representatives of the state board of animal health commissioner, for purposes of inspecting livestock in transit for health or ownership identification, may stop vehicles transporting livestock on public highways of this state. When signaled by the state veterinarian or an authorized agent or representative of the board commissioner to stop, the operator of any vehicle shall stop the vehicle, show any health or identification forms which are required to be carried in transportation of livestock, and permit the inspector to make an inspection of the livestock being transported if deemed by the inspector to be necessary. Failure to stop when so directed is a class A misdemeanor. The inspector is authorized to use a stop signal.

The state board of animal health, the state veterinarian, or any authorized agent or representative of the board commissioner, may call any sheriff or deputy sheriff, police officer, or highway patrol officer, to execute its orders, and those officers must obey. Any law enforcement officer may arrest and take before any district judge serving the county any person found violating any of the provisions of this chapter. The law enforcement officer shall immediately notify the state's attorney of the county of the arrest, and the state's attorney shall prosecute the person found violating any provision of this chapter.

**SECTION 19. AMENDMENT.** Section 36-01-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-19. Emergency fund in case of epizootic.** In case of any serious outbreak of any contagious, infectious, or epizootic diseases among domestic animals or nontraditional livestock, which cannot be controlled with the funds at the disposal of the board commissioner, the board commissioner shall notify the governor at once, and the governor thereupon shall call a meeting of the emergency commission; and such. The emergency commission may authorize money to be drawn from the state treasury to meet the emergency.

**SECTION 20. AMENDMENT.** Section 36-01-29 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-29. Monitored livestock feedlots - Rules - License.** The board of animal health may adopt rules for the establishment and maintenance by any person of a monitored livestock feedlot. Any person may, on compliance with the rules, obtain a license for the feedlot upon filing an application with the state board of animal health commissioner and upon the payment of an annual fee of fifty dollars to the state board of animal health commissioner. The fee must be deposited with the state treasurer in the general fund out of which, upon legislative appropriation, the veterinarian inspector's fees and cost of administration must be paid. When licensed and in compliance with the rules for the maintenance of the monitored livestock feedlot, the licensee is authorized to confine and feed, in the feedlot, without vaccination for brucellosis and such other diseases as the board of animal health may specify, cattle to be sold only for slaughter or to another monitored feedlot.

**SECTION 21. AMENDMENT.** Section 36-01-30 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-30. Feedlot registration - Rules - Penalty.** No person may operate a registered livestock feedlot without obtaining from the board of animal health commissioner a registration number. The board of animal health is authorized to may adopt rules for the operation of feedlots registered for the enforcement of brand inspection rules. Applications for registration must be made upon forms as may be

prescribed by the board and must be accompanied by a fee equal to the fee charged for brand recording. All fees and any inspection fees established by the board must be remitted regularly to the North Dakota stockmen's association. The board may adopt rules ~~under chapter 28-32 as may be~~ required for the purpose of assuring that brand laws are complied with, brand inspection certificates are available, and proper records are maintained. A registration issued under this section may be revoked or suspended for violation of any ~~provision of law or of any rule adopted by the board under this section.~~ In addition, any person violating ~~any provision of this section or any rule adopted by the board under this section~~ is guilty of a class B misdemeanor. ~~The provisions of this This section may does not be construed as prohibiting prohibit~~ the operation of nonregistered feedlots.

**SECTION 22. AMENDMENT.** Section 36-05-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-05-03. License requirements - Application - Fee - Commission schedule - Facilities.** No person; ~~partnership, firm, corporation, or limited liability company~~ may establish or operate a livestock auction market within this state without first procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the ~~executive officer of the board of animal health~~ state veterinarian. An applicant for such license shall do all of the following:

1. Make a written application therefor in the form prescribed by the commissioner.
2. File such evidence as the board of animal health or the commissioner may require showing that the person is financially responsible to operate such an auction market and that the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock.
3. Pay to the commissioner a license fee of two hundred dollars.
4. File with the commissioner a schedule of the fees and commissions which will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. This schedule may not be altered except upon notification to the commissioner and reposting of the changed schedule.
5. State the place where applicant proposes to operate a livestock auction market.
6. Make a complete and detailed description of the property and facilities proposed to be used in connection with such livestock auction market.
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

**SECTION 23. AMENDMENT.** Section 36-05-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-05-09. Records to be kept by operator of auction market - Contents - Examination - Report.** The operator of each livestock auction market shall keep on file an accurate record of all of the following:

1. The date on which each consignment of animals was received and sold.
2. The name and address of the buyer and seller of such animals.
3. The number and species of the animals received and sold.
4. The marks and brands on each such animal.

This record, together with the gross selling price, commission, and other proper care, handling, and sales charges on each consignment of livestock must be available for inspection by the ~~board of animal health~~, the commissioner, or authorized inspectors, and a copy thereof must be supplied to the owner of such livestock. All records of sales during the preceding twelve months must be kept readily accessible for immediate examination.

**SECTION 24. AMENDMENT.** Section 36-05-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-05-10. Inspection of livestock - Fees and rules governing.** When an animal enters a livestock auction market and before it is offered for sale, it must be inspected for health by a veterinarian licensed in this state and approved by the board of animal health and in the case of cattle for brands by a trained brand inspector, acting under rules adopted by the North Dakota stockmen's association and the board of animal health. Veterinary inspection must include all livestock, whether it is to be moved interstate or intrastate. The veterinary inspector must be recommended by the livestock auction agency and approved by the ~~state~~ board of animal health. Such veterinarian must be a local veterinarian or a veterinarian of the vicinity, unless there is no such veterinarian available. If the livestock agency fails to recommend such a veterinarian within a reasonable time, the board may in ten days' notice to such agency appoint a veterinarian. The services and duties of the veterinary inspector are under the supervision of the ~~state~~ board of animal health and ~~said~~ the inspector must be relieved of ~~his services by the board office~~ when ~~he~~ the inspector fails to perform ~~such those~~ services and duties ~~as required of him by the board of animal health~~. This section does not apply to veterinarians who were approved by ~~the board of animal health prior to an authorized state agency before July 1, 1969~~. Fees for ~~such the~~ inspection must be paid to the veterinarian by the auction market company and must be in an amount agreed upon by the auction market company and the veterinarian.

**SECTION 25. AMENDMENT.** Section 36-05-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-05-13. Use of fees - Grounds for refusal or revocation of license - Procedure on default of licensee.** All fees collected by the commissioner ~~and the board of animal health~~ under this chapter must be credited to the general fund of the state treasury. A license to operate a livestock auction market may be refused or revoked for any of the reasons specified in section 36-04-10 or subsection 2 of section 36-04-04. When the holder of a license issued under this chapter defaults in any of the conditions of any bond filed with the commissioner by the licensee, the commissioner will become trustee of the bond and sections 36-04-12 through 36-04-19 govern the procedure to be followed.

**SECTION 26. AMENDMENT.** Section 36-07-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-07-01. License required to operate rendering plant.** No person; ~~firm, corporation, or limited liability company~~ may operate a rendering plant or other establishment using the carcasses of domestic or wild animals, which are not intended for human consumption, for processing without first obtaining a license to do so from the state board of animal health commissioner of agriculture. The license may be issued only upon a written application filed with the board commissioner in accordance with ~~the provisions~~ of this chapter and rules adopted by the board.

**SECTION 27. AMENDMENT.** Section 36-07-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-07-02. Inspection of establishment of applicant by state board of animal health veterinarian.** Upon the receipt of an application for a license to operate a rendering plant or other establishment using the carcasses of domestic or wild animals, which are not intended for human consumption, for processing, the state board of animal health veterinarian shall cause an inspection to be made of the establishment for which a license is requested, including its equipment and vehicles and the manner in which its business is conducted, with reference and due regard to the danger of animal disease transmission and dissemination.

**SECTION 28. AMENDMENT.** Section 36-07-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-07-03. Granting of license - Fee - Term.** If the inspection fails to reveal any danger of animal disease transmission, the state board of animal health commissioner of agriculture shall issue the license applied for upon payment of a fee of fifty dollars. The license is valid for a period of one year from the date of issuance unless it is revoked for cause by the board commissioner before expiration.

**SECTION 29. AMENDMENT.** Section 36-07-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-07-09. Operator of vehicle for plant to have certificate.** Any person operating a vehicle for an establishment licensed under this chapter ~~shall~~ must have an authorized certificate from the establishment which has been approved by the state board of animal health commissioner of agriculture.

**SECTION 30. AMENDMENT.** Section 36-07-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-07-10. Inspection of plant authorized.** The operator of any establishment licensed under this chapter shall permit an official authorized by the state board of animal health veterinarian or any health officer to inspect the licensed establishment at any time.

**SECTION 31. AMENDMENT.** Section 36-14-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14-03. Animals infected with contagious or infectious disease to be confined and isolated from other animals.** The owner, agent, or person having in charge any animal infected or suspected of being infected with any contagious disease shall confine the animal immediately in a safe place isolated from all other animals with all necessary restrictions to prevent the dissemination of the disease until the arrival of an accredited agent of the state board of animal health veterinarian.

**SECTION 32. AMENDMENT.** Section 36-14-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14-05. Cattle brought into state - Certificate of veterinary inspection required.** All cattle brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable disease, except that no certificate of veterinary inspection is required for those cattle originating directly from a producer's premises and not diverted en route, if the cattle are delivered directly to a licensed auction market or other premises approved by the ~~board of animal health~~ commissioner of agriculture.

**SECTION 33. AMENDMENT.** Section 36-14-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14-06. Certificate of veterinary inspection required of sheep imported into state - Contents.** All sheep brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable diseases, except that no certificate of veterinary inspection is required for those sheep originating directly from a producer's premises and not diverted en route, if the sheep are delivered directly to a licensed auction market or other premises approved by the ~~board of animal health~~ commissioner of agriculture.

**SECTION 34. AMENDMENT.** Section 36-14-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14-07. Swine brought into state to have certificate of veterinary inspection - Contents.** All swine brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable diseases, except that no certificate of veterinary inspection is required for those swine originating directly from a producer's premises and not diverted en route, if the swine are delivered directly to a licensed auction market or other premises approved by the ~~board of animal health~~ commissioner of agriculture.

**SECTION 35. AMENDMENT.** Section 36-14-09 of the North Dakota Century Code is amended and reenacted as follows:

**36-14-09. Living hog cholera virus and vaccines - Purchase, possession, or use of living hog cholera virus and vaccines prohibited - Penalty.** The purchase, possession, or use of living hog cholera virus and vaccines by any person including all licensed veterinarians, is ~~hereby prohibited and made unlawful~~ except by written permit issued by the ~~executive officer and~~ state veterinarian. Any person violating ~~any of the provisions of~~ this section is guilty of a class B misdemeanor.

**SECTION 36. AMENDMENT.** Section 36-14-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14-10. Shipments of cattle, swine, and sheep for immediate slaughter.** Shipments into this state of cattle, swine, and sheep for immediate slaughter may be permitted without a certificate of veterinary inspection only if the livestock are not diverted en route, and are delivered directly to a slaughtering establishment approved by the ~~board of animal health~~ commissioner of agriculture.

**SECTION 37. AMENDMENT.** Section 36-14-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14-12. Requirements governing the issuance of certificates.** The certificate certifying to a test made under ~~the provisions of~~ this chapter must be made on official federal or state blanks and must accompany the shipment to its destination. When an original certificate is made, two copies of the certificate must be mailed immediately to the state ~~board of animal health~~ veterinarian. The failure of a veterinarian to mail two copies of each certificate relating to livestock to be shipped into this state to the ~~board~~ state veterinarian is sufficient cause to refuse acceptance of any more certificates from that person. The owner or owners of the livestock ~~shall~~ must have a copy of the certificate to show on the demand of any federal or state official.

**SECTION 38. AMENDMENT.** Section 36-14-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14-15. Duty of state's attorney to bring actions for violation of provisions of chapter - Notice.** If livestock is brought into this state in violation of ~~any provision of~~ this chapter or contrary to any rule of the state board of animal health, the state veterinarian or other accredited agent of the ~~board~~ commissioner shall notify the state's attorney of the county into which ~~such~~ the livestock has been brought. Immediately upon receiving ~~such a~~ the notice, the state's attorney shall bring an action against any person; ~~firm, corporation, or limited liability company~~ charged with bringing, transporting, or importing livestock contrary to any provision of this chapter or of any rule of the state board of animal health.

<sup>177</sup> **SECTION 39. AMENDMENT.** Subsection 1 of section 36-14-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If the animal died of anthrax, as determined by ~~an agent of the state board of animal health~~ a licensed veterinarian, the carcass must be completely burned at the place where it died if possible. If the carcass must be moved, it may not be dragged over the ground but must be moved only on a suitable conveyor, and all body openings in the carcass must be plugged with cotton saturated with a strong antiseptic solution.

**SECTION 40. AMENDMENT.** Section 36-14.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14.1-01. Definitions.** As used in this chapter:

1. "Board" means the state board of animal health.
2. "Commissioner" means the commissioner of agriculture.
3. "Destroy" means to condemn because of hog cholera under state authority and slaughter or otherwise kill as a result of ~~a~~ or pursuant to such condemnation.

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<sup>177</sup> Section 36-14-19 was also amended by section 1 of Senate Bill No. 2196, chapter 349.



- 3- 4. "Hog cholera" means the contagious, infectious, and communicable disease of swine commonly known as hog cholera.

**SECTION 41. AMENDMENT.** Section 36-14.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**36-14.1-02. General authority.** The board; ~~or its executive officer or any authorized agents thereof;~~ or the state veterinarian may destroy or require the destruction of any swine ~~which said that the board; executive officer, or agent; the state veterinarian~~ knows to be, or suspects is, infected with, affected with, or exposed to hog cholera, whenever ~~said board; executive officer, or agents; finds such destruction to be~~ is necessary to prevent or reduce the danger of the spread of hog cholera.

**SECTION 42. AMENDMENT.** Section 36-14.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**36-14.1-03. Appraisal and indemnification.** The board; ~~or its executive officer, or agents;~~ or the state veterinarian shall appraise any swine destroyed or ordered destroyed pursuant to this chapter and shall indemnify the owner of such swine in an amount to be set by the board for either registered animals or grade animals.

**SECTION 43. AMENDMENT.** Section 36-14.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**36-14.1-04. Institution of indemnification.** It is hereby recognized and declared that indemnification for the destruction of swine infected with, exposed to, or suspected of being affected or exposed to hog cholera, is an expression of the public policy of this state to be employed only in the final phase of the official state-federal eradication program in the state, or as a means of preventing or minimizing its recurrence, as such may be determined by the board. ~~The Neither the board; or its executive officer, or agents; nor the state veterinarian may not~~ institute an initial program of indemnification until the state has been approved as meeting the requirements specified by the appropriate cooperating federal agency.

**SECTION 44. AMENDMENT.** Section 36-14.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**36-14.1-05. Cooperation with the United States.** The board; ~~or its executive officer, or agents;~~ may cooperate with the United States, or any department, agency, or officer thereof, in the control and eradication of hog cholera, including the sharing in the payment of indemnities for swine destroyed, but the state ~~shall~~ may only share in such payment of indemnities in the amounts or rates set by the board.

**SECTION 45. AMENDMENT.** Section 36-14.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**36-14.1-07. Review.** Any act or omission of the board or commissioner pursuant to or within the purview of this chapter is reviewable by the courts of this state as provided in chapter 28-32.

**SECTION 46. AMENDMENT.** Section 36-15-09 of the North Dakota Century Code is amended and reenacted as follows:

**36-15-09. Return of appraisal - Payment of claims for diseased animals.**

The return of an appraisal made under ~~the provisions~~ of this chapter must be in writing and signed by the board or by the agent thereof which made the appraisal, or by the members of the board of appraisers if a reappraisal is made after a protest, and by the owner of the condemned animal. The return must be certified by the ~~executive officer of the board~~ commissioner of agriculture to the state auditor, who shall draw a warrant upon the state treasurer in favor of the owner of the animal. The amount of indemnity paid by this state, however, must be, in the case of an animal condemned because it is infected with tuberculosis or paratuberculosis, one-third of the difference between the appraised value of the animal and the net value of the salvage received by the owner, however, the indemnity payments may not exceed twenty-five dollars for each grade animal or fifty dollars for each registered purebred animal, except, that if the federal government fails to provide an amount of indemnity equal to that provided by the state, the owner must be paid one-half of the difference between the appraised value of the animal and the net value of the salvage thereof. Before any indemnity payment is made for such registered purebred animals, a certificate of registration in a recognized herdbook must be submitted to the state veterinarian prior to the date set for slaughter of said animal. This state is not liable for indemnity under ~~the provisions~~ of this chapter in excess of the amount appropriated for the payment of such indemnity by the legislative assembly, and the state is not liable for indemnity for any animal killed during a biennium after the appropriation for such biennium has been exhausted.

**SECTION 47. AMENDMENT.** Section 36-15-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-15-14. Cattle not to be permitted to enter area circumscribed by board for testing purposes.** The ~~board may~~ commissioner shall enforce the tuberculin testing or the brucellosis testing of all cattle in a circumscribed area as established by the board in accordance with the provisions of this chapter providing for the eradication of bovine tuberculosis or brucellosis, as the case may be, and the rules of the board relating to eradication. Whenever a circumscribed area is established by the board as an area in which all cattle are to be tuberculin tested or brucellosis tested, as the case may be, and the test is undertaken under the direction of the board, no other cattle may be permitted to enter the area except under a special permit and restrictions provided by the board unless:

1. If the area is to be tuberculin tested, the cattle have been tuberculin tested under the direction of an agent of the board or are accompanied by a proper tuberculin test certificate of veterinary inspection.
2. If the area is to be brucellosis tested, the cattle have been brucellosis tested under the direction of an agent of the board or are accompanied by a proper brucellosis test certificate of veterinary inspection.

**SECTION 48. AMENDMENT.** Section 36-15-19 of the North Dakota Century Code is amended and reenacted as follows:

**36-15-19. Penalty for violation of provisions relating to testing of livestock.** Any person who refuses to assist ~~in or attempts to prevent the board or its agents in; or who endeavors to prevent the board or its agents~~ the commissioner from; carrying out ~~the provisions~~ of this chapter, or who violates any of the provisions of this chapter relating to the testing of cattle, is guilty of a class B misdemeanor.

**SECTION 49. AMENDMENT.** Section 36-21.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-21.1-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Animal" includes every living animal except the human race.
2. ~~"Board"~~ "Commissioner" means the ~~state board of animal health commissioner of agriculture.~~
3. "Cruelty" or "torture" includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted.
4. "Investigator" means any person ~~employed or~~ approved by the board to determine whether there has been a violation of this chapter.

**SECTION 50. AMENDMENT.** Subsection 2 of section 36-21.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The sheriff, police officer, licensed veterinarian, investigator, or whoever has custody of the animal has a lien thereon, superior to any other claim or lien, for its care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner. If such lien is not discharged and satisfied by the owner within five days after notice, the person holding such claim may apply to the district court for an order to sell such animal to discharge such lien. Upon order of the court, the animal must be sold at a public market to pay the charges for keeping the same, and the title to the animal passes by the sale. The court may award costs and reasonable attorney's fees to the person bringing the action to enforce the lien, and the remainder, if any, must be paid over to the owner, if known, or if the owner is not known, the remainder must be deposited in the county general fund. If no purchaser is found, the animal, at the discretion of the ~~board commissioner,~~ may be offered for adoption or disposed of consistent with this chapter or with any other provision of law.

**SECTION 51. AMENDMENT.** Section 36-21.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**36-21.1-11. Penalty.** Any person knowingly and willfully violating any ~~regulation promulgated~~ rule adopted by the board ~~pursuant to the provisions of chapter 28-32~~ or violating any provision of this chapter for which a specific penalty is not provided is guilty of a class A misdemeanor.

**SECTION 52. AMENDMENT.** Section 36-21.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**36-21.1-12. Duties of board and commissioner.** The board shall ~~administer this chapter and shall promulgate such adopt~~ rules and regulations, pursuant to the provisions of chapter 28-32, as are necessary to effectuate the purposes of this chapter. The board ~~may~~ by regulation rule may restrict the importation into the state, and restrict the sale or other distribution within the state, of all domestic animals or animals wild by nature which the board may have reason to believe may

be a threat to the health and well-being of the human or animal population of the state, or both, unless the importation or sale is for bona fide scientific or educational purposes. The ~~executive officer of the~~ board shall establish reasonable qualifications for approved investigators and the commissioner shall maintain a current listing of all approved investigators. Employees of the ~~board~~ commissioner may be assigned as investigators. The ~~board~~ commissioner may by injunctive procedure without bond or other undertaking proceed against any person or persons for a continuous violation of any provision of this chapter. No liability may accrue to the board, the commissioner, or ~~its~~ any authorized representative in proceeding against any person or persons pursuant to this section.

<sup>178</sup> **SECTION 53. REPEAL.** Section 36-01-11 of the 1993 Supplement to the North Dakota Century Code is repealed.

**SECTION 54. EFFECTIVE DATE.** This Act becomes effective on July 1, 1995.

**SECTION 55. EXPIRATION DATE.** Section 5 of this Act is effective through December 31, 1996, and after that date is ineffective.

Approved April 12, 1995  
Filed April 13, 1995

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<sup>178</sup> Section 36-01-11 was also amended by section 23 of House Bill No. 1026, chapter 350.

**CHAPTER 348****SENATE BILL NO. 2250**

(Senators Solberg, Christmann, O'Connell)  
(Representatives Rennerfeldt, Schimke, Sitz)

**CANCELED BRANDS RECORDING**

AN ACT to amend and reenact section 36-09-10 of the North Dakota Century Code, relating to recording of canceled brands.

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

**SECTION 1. AMENDMENT.** Section 36-09-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-09-10. Brands to be rerecorded every ten years.** Failure to rerecord any previously recorded livestock brand or mark on or before the time specified, in accordance with this chapter, is deemed an absolute abandonment of the previously recorded livestock brand or mark. For one year from the date of cancellation, the chief brand inspector may not reassign a canceled brand or mark to any person other than the registered owner at the time of cancellation. By written notice to the chief brand inspector, the registered owner at the time of cancellation may authorize reassignment of the brand or mark within the one-year period. Thereafter the chief brand inspector shall accept any regular application for the issuance to anyone of the abandoned livestock brand or mark, provided the abandoned livestock brand or mark complies with the standards of section 36-09-02.1. The chief brand inspector shall issue a certificate for the use of the abandoned brand or mark within this state, except that the brand or mark may not be issued if it consists of a single figure or single letter.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 349****SENATE BILL NO. 2196**

(Agriculture Committee)

(At the request of the State Board of Animal Health)

**DISPOSAL OF CONTAGIOUS ANIMALS**

AN ACT to amend and reenact section 36-14-19 of the North Dakota Century Code, relating to the disposal of animals.

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

<sup>179</sup> **SECTION 1. AMENDMENT.** Section 36-14-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-14-19. Disposition of carcass of animal dying from contagious or infectious disease.** Any animal which is found dead must be presumed to have died from a contagious or infectious disease until the contrary is shown unless another cause of death is apparent. The owner or person in charge of any domestic animal or nontraditional livestock which dies within this state from or on account of any contagious or infectious disease shall dispose of the carcass of such animal as follows:

1. If the animal died of anthrax, as determined by an agent of the state board of animal health, the carcass must be completely burned at the place where it died if possible. If the carcass must be moved, it may not be dragged over the ground but must be moved only on a suitable conveyor, and all body openings in the carcass must be plugged with cotton saturated with a strong antiseptic solution.
2. If the carcass is of a hog which died from hog cholera or swine erysipelas, the same, with hide intact, must be burned within thirty-six hours or given to a licensed rendering plant within such time.
3. If the carcass is of an animal which has died of a disease other than is specified in subsections 1 and 2, or from any other cause, it must be burned, buried, composted, or given to a licensed rendering plant within thirty-six hours, or must be disposed of by a method approved by the state veterinarian. If the carcass is buried, it must be buried not less than four feet [1.22 meters] below the surface of the ground and covered with dirt to that depth. No carcass may be disposed of along any public highway or along any stream, lake, or river nor be buried near or adjoining any such place.

Approved March 7, 1995

Filed March 7, 1995

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<sup>179</sup> Section 36-14-19 was also amended by section 39 of Senate Bill No. 2505, chapter 347.

# MILITARY

## CHAPTER 350

### HOUSE BILL NO. 1026

(Legislative Council)

(Interim Budget Committee on Government Finance)

(Representatives Howard, Hausauer)

(Senators Grindberg, Streibel, Solberg)

## BIENNIAL REPORTS

AN ACT to create and enact a new section to chapter 37-03 of the North Dakota Century Code, relating to biennial reports; to amend and reenact sections 2-05-04, 4-02.1-26, 4-05.1-04, 4-27-11, 6-01-10, 13-03-10, 13-03.1-10, 13-05-08.1, 15-02-08, 15-10-14.1, 15-20.1-21, 15-21-14, 15-52-28, 18-01-29, 20.1-02-04, 23-01-06, 24-02-01.5, 24-02-10, 26.1-01-03, 26.1-21-22, 34-05-01, 34-06-20, 36-01-11, 37-03-05, 37-14-09, 37-15-19, 43-01-06, 43-04-19, 43-09-05, 43-10-08, 43-13-09, 43-15-12, 43-17-12, 43-23-02, 43-28-09, 46-02-04, 49-01-13, 52-02-03, 52-10-09, 54-06-03, 54-06-04, 54-09-02, 54-10-01, 54-11-01, 54-12-05, 54-17-06, 54-36-06, 54-42-05, 54-44.3-07, 54-46-11, 57-01-02, 61-03-04, 61-04.1-10, and 65-02-09 of the North Dakota Century Code, relating to reports to the governor and the secretary of state; and to repeal section 54-06-05 of the North Dakota Century Code, relating to the condensing of reports and copies of reports.

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

**SECTION 1. AMENDMENT.** Section 2-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**2-05-04. Commission organization - Reports - Offices.** The Within thirty days after its appointment, the commission shall; within thirty days after its appointment, organize; and make such adopt rules and regulations for its administration as it may deem determine to be expedient. The commission shall may submit a biennial report to the governor and office of management and budget in the manner prescribed by the secretary of state in accordance with section 54-06-04. The commission shall maintain its office in the state capitol.

**SECTION 2. AMENDMENT.** Section 4-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**4-02.1-26. Annual report.** The secretary or other officer charged with such the duty shall to compile an annual report of the proceedings of the state fair association and its financial condition for the preceding fiscal year: Such report must be prepared so as to be available for by the annual meeting: A shall file a copy of such report must be filed in the office of the commissioner of agriculture; who. The commissioner shall include it, in whole or in part, in his the commissioner's biennial report to the governor and the office of management and budget secretary of state.

**SECTION 3. AMENDMENT.** Section 4-05.1-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-05.1-04. Reports to director and state board of higher education.** Each superintendent shall submit a biennial report to the director on or before the first day of August of each odd-numbered year. Each report must set forth in detail the investigations and experiments made during the preceding fiscal biennium, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended, and the results of experiments. The director shall submit these reports, with a biennial report of the North Dakota state university main research station, to the board of higher education on or before the first day of September of each odd-numbered year. ~~In addition to any requirements established under~~ If the board of higher education submits a biennial report to the governor and the secretary of state in accordance with section 54-06-04, the board of higher education shall the report must include a composite of the reports from the research station and each research center in its biennial report to the governor and the office of management and budget.

**SECTION 4. AMENDMENT.** Section 4-27-11 of the North Dakota Century Code is amended and reenacted as follows:

**4-27-11. Biennial report and audit of commission.** The commission ~~shall~~ may submit a biennial report to the governor and the ~~office of management and budget as prescribed by secretary of state in accordance with~~ section 54-06-04. The ~~state auditor shall audit biennially the books, records, and accounts must be audited biennially by the state auditor, of the commission.~~ The commission shall pay the cost of such the audit to be paid from the funds of the commission.

**SECTION 5. AMENDMENT.** Section 6-01-10 of the North Dakota Century Code is amended and reenacted as follows:

**6-01-10. Commissioner to keep records and make reports - Biennial report of the department.**

1. The assistant commissioner shall act as secretary and keep all proper records and files pertaining to the duties and work of the office of the assistant commissioner and the proceedings of the board. The commissioner shall report to the board annually, touching on all the commissioner's official acts and those of the deputy examiners, giving abstracts of statistics and of the conditions of the various institutions to which the commissioner's duties relate, and making such recommendations and suggestions as the commissioner may ~~deem~~ determine proper.
2. The state banking board shall submit a biennial report to the governor and the ~~office of management and budget as prescribed by secretary of state in accordance with~~ section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, ~~there must be included in the banking board's report must include~~ a summary or abstract of the reports of the commissioner.
3. The commissioner shall report to the state credit union board annually in the same manner as this section provides for the commissioner's report to the state banking board. The state credit union board shall submit a biennial report to the governor and the ~~office of management and budget as prescribed by~~ secretary of state in accordance with section



54-06-04, and in addition, ~~there must be included in~~ the credit union board's report must include a summary or abstract of the reports of the commissioner.

4. The biennial reports of the state banking board and the state credit union board shall be published in the form of a combined biennial report of the department of banking and financial institutions. The biennial report of the department shall be submitted to the governor and the office of management and budget as prescribed by secretary of state in accordance with section 54-06-04. The biennial report of the department must include all other biennial reports which the commissioner or the boards are required by law to submit to the governor and the office of management and budget.

**SECTION 6. AMENDMENT.** Section 13-03-10 of the North Dakota Century Code is amended and reenacted as follows:

**13-03-10. Books and records - Annual reports - Biennial reports report.**

1. Each licensee shall ~~keep and use in his business such books and accounting maintain~~ records as are in accord conformity with sound and generally accepted accounting principles and practices and as may be prescribed by the commissioner of banking and financial institutions. ~~Such~~ The licensee shall preserve ~~such the~~ books and accounting records for at least two years after making the final entry on any loan recorded ~~therein~~ in the books and records.
2. The parent company of each licensee shall file annually on or before ~~the~~ July thirty-first ~~day of July~~ file a report for the preceding fiscal year with the commissioner. ~~Such~~ The report must give composite information on the financial condition of its licensees and must include all information requested by the commissioner. ~~Such~~ The report must be made under oath and must be in the form prescribed by the commissioner ~~who.~~ The commissioner may make and publish annually an analysis and recapitulation of ~~such the~~ reports.
3. The commissioner shall submit a biennial report to the governor and the office of management and budget as prescribed by secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, ~~there must be included in~~ the commissioner's report must include a summary or abstract of the annual reports filed with the commissioner.

**SECTION 7. AMENDMENT.** Section 13-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**13-03.1-10. Records - Annual reports - Biennial report.**

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with ~~the provisions of~~ this chapter. The recordkeeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating

to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

2. On or before July thirty-first each year the parent company of each licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all loans made by its licensees. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. The administrator may make and publish annually an analysis and recapitulation of such reports.
3. The administrator shall submit a biennial report to the governor and the ~~office of management and budget as prescribed by secretary of state in accordance with~~ section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, ~~there must be included in the administrator's report must include~~ a summary or abstract of the annual reports filed with the administrator.

**SECTION 8. AMENDMENT.** Section 13-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-08.1. Biennial report.** The commissioner of banking and financial institutions shall submit a biennial report to the governor and the ~~office of management and budget as prescribed by secretary of state in accordance with~~ section 54-06-04.

**SECTION 9. AMENDMENT.** Section 15-02-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-02-08. Commissioner to keep record of permanent funds - Biennial report to governor and office of management and budget.** The commissioner shall keep a record in suitable books showing a detailed quarterly statement of the condition of all of the permanent funds under the control of the board of university and school lands, the amount of each fund, how invested, when due, interest paid, and all acts connected with the management of such funds. All records and record books ~~must be~~ are open at all times for inspection by the public. The commissioner ~~shall~~ may submit a biennial report to the governor and the ~~office of management and budget as prescribed by secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04~~ If submitted, the report must show all investments of ~~such~~ the several funds, the work done during the preceding fiscal biennium, the number of acres [hectares] of land sold or leased by the department, the amount received therefor, the amount of interest received to the credit of the several funds, the expense of administration of the department, and all ~~such~~ other matters relating to ~~his~~ the commissioner's office as are necessary to disclose fully the operation of the department.

**SECTION 10. AMENDMENT.** Section 15-10-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-14.1. Biennial report of the state board of higher education.** The state board of higher education ~~shall biennially make~~ may submit a biennial report to the governor and to the ~~office of management and budget secretary of state for the educational institutions under its control as provided by law. The~~ If submitted, the report must cover enrollments, major functions and programs, and major goals and objectives, and the extent of achievement of those goals and objectives. The report

must also include summaries of financial reports, a narrative explaining the significance of that data, and ~~such~~ other information ~~as~~ the board may choose.

**SECTION 11. AMENDMENT.** Section 15-20.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.1-21. Report of state board to governor and office of management and budget Biennial report.** The state board ~~shall~~ may submit a biennial report to the governor and the office of management and budget as prescribed by secretary of state in accordance with section 54-06-04. ~~In addition to any requirements established pursuant to section 54-06-04~~ If submitted, the report must set forth the condition of vocational education in the state, a list of the schools to which federal and state aid for vocational education has been given, and a detailed statement of the expenditures of federal and state funds for that purpose.

**SECTION 12. AMENDMENT.** Section 15-21-14 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-14. Biennial report - Contents.** The superintendent of public instruction shall submit a biennial report to the governor and the office of management and budget as prescribed by secretary of state in accordance with section 54-06-04 ~~a biennial report which, in addition to any requirements established pursuant to section 54-06-04.~~ The report must show:

1. The number of school districts in the state and the number of teachers employed, and pupils taught therein, the attendance of pupils, and the studies pursued by them.
2. The financial condition of the various public schools, their receipts and expenditures, the value of schoolhouses and property, the costs of tuition, and the salaries of teachers.
3. The condition, educational and financial, as far as it can be ascertained, of the private schools and academies of the state.
4. Such general matters, information, and recommendations relating to the educational interests of the state ~~as he may deem~~ deemed important.

**SECTION 13. AMENDMENT.** Section 15-52-28 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-28. Biennial report.** The board of higher education ~~shall~~ may submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with section 54-06-04 to the governor and the office of management and budget.~~

**SECTION 14. AMENDMENT.** Section 18-01-29 of the North Dakota Century Code is amended and reenacted as follows:

**18-01-29. Biennial report of fire marshal.** The state fire marshal ~~shall~~ may submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with section 54-06-04 to the governor and the office of management and budget.~~

**SECTION 15. AMENDMENT.** Section 20.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-04. Duties of director. The director shall:**

1. Maintain an office in Bismarck.
2. Adopt rules necessary to the conduct of the department.
3. Keep an accurate record of all the transactions and expenditures of the department and submit a biennial report to the governor and the ~~office of management and budget~~ a biennial report as prescribed by secretary of state in accordance with section 54-06-04.
4. Enforce state laws involving wildlife.
5. Collect and distribute statistics and information germane to this title and publish information and reports, including a monthly bulletin, for the education of the public in conservation matters.
6. Examine all waters of the state and, wherever suitable waters are found, arrange to plant, stock, or deposit available fish, spawn, or fry.
7. Cooperate with the United States fish and wildlife service, or any other appropriate federal agency, and make applications for fish, spawn, and fry, to apportion and deposit in waters of the state.
8. Cooperate with and assist clubs and individuals in stocking the waters of this state with fish.
9. Remove or take from any public waters containing a surplus of fish, any reasonable quantity of fish for stocking other public waters, for hatching or propagating purposes, or for exchange with other states and countries.
10. Control, construct, mark, designate, manage, and have charge of all state fish hatcheries, state game farms, game refuges, and game reserves owned, leased, or controlled for the propagation and protection of game birds, game animals, and fish.
11. Supervise the breeding, propagation, capture, distribution, and preservation of game birds, game animals, and fish as the director deems advisable.
12. Adopt rules necessary for carrying out section 20.1-10-01 and these rules have the force of law after one publication in the daily newspapers of this state.
13. Provide the necessary blank forms for making applications for licenses of all kinds and distribute them among those authorized to sell licenses.
14. Keep a record of all permits issued for the purpose of propagation and domestication of game birds or protected animals.

<sup>180</sup> **SECTION 16. AMENDMENT.** Section 23-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-06. Report of state health officer Biennial report - Contents.** The state health officer shall submit a biennial report to the governor and the ~~office of management and budget as prescribed by~~ secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must cover the following subjects:

1. The activities of the various divisions, the work accomplished during the two years covered by the report, and an analysis of the program of each of the divisions.
2. The expenditures of the state department of health and consolidated laboratories.
3. The expenditures in each county board of health or the district board of health.
4. Any reports relating to the hospital program as required by the health council.

**SECTION 17. AMENDMENT.** Section 24-02-01.5 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**24-02-01.5. Department of transportation - Administrative rules.** The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5; ~~according to chapter 28-32.~~ Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-03-03, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 2 of section 57-43.2-01, and section 57-43.2-37 ~~shall~~ remain in effect until they are specifically amended or repealed by the department.

**SECTION 18. AMENDMENT.** Section 24-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-10. Biennial report.** The director shall submit a biennial report to the governor and the ~~office of management and budget a biennial report as prescribed by~~ secretary of state in accordance with section 54-06-04.

**SECTION 19. AMENDMENT.** Section 26.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-03. Duties of commissioner.** The commissioner shall:

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<sup>180</sup> Section 23-01-06 was also amended by section 2 of House Bill No. 1058, chapter 243.

1. See that all the laws of this state respecting insurance companies and benevolent societies are executed faithfully.
2. Report in detail to the attorney general any violation of law relative to insurance companies and their officers or agents.
3. File the articles of incorporation of all insurance companies organized or doing business in this state, and on application furnish a certified copy thereof.
4. Furnish the insurance companies required to make reports to the commissioner and the benevolent societies the necessary blank forms for required statements and reports. The commissioner is not required to send blank forms to those insurance companies which submit their reports on printed forms conforming to those furnished by the commissioner.
5. Preserve in permanent form a full record of the commissioner's proceedings and a concise statement of each company or agency visited or examined.
6. Furnish at the request of any person, upon the payment of the required fee, certified copies of any record or paper in the commissioner's office, if the commissioner deems it not prejudicial to the public interests to do so, and give such other certificates as may be provided by law.
7. Submit a biennial report as prescribed by section 54-06-04 to the governor and the ~~office of management and budget~~ secretary of state. In addition to the requirements of section 54-06-04, the report must contain an abstract only of the reports of the various insurance companies doing business in this state showing the condition of the companies.
8. Send a copy of the commissioner's annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.
9. Communicate, on request, to the insurance commissioner of any other state any facts ~~which~~ that by law it is the commissioner's duty to ascertain respecting companies of this state doing business within that state.
10. Manage, control, and supervise the state bonding fund.
11. Manage, control, and supervise the state fire and tornado fund and the insurance of public buildings in that fund.

**SECTION 20. AMENDMENT.** Section 26.1-21-22 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-22. Publication of statement of fund - Biennial report to governor and office of management and budget.** The commissioner, on or about the December first day of December in each odd-numbered year after the regular session of the legislative assembly, shall publish in four newspapers of general circulation within the state a copy of the statement of the commissioner's work and of the condition of the fund during the two preceding fiscal years. The commissioner shall submit a

biennial report ~~as prescribed by to the governor and the secretary of state in accordance with section 54-06-04 to the governor and to the office of management and budget.~~

**SECTION 21. AMENDMENT.** Section 34-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**34-05-01. Statistics relating to the employment of labor.** The commissioner of labor shall collect, systematize, and ~~present~~ submit in biennial reports ~~as prescribed by to the governor and the secretary of state in accordance with section 54-06-04 to the governor and the office of management and budget~~ statistical details relating to the employment of labor in the state. The statistics may be classified as the commissioner of labor ~~deems~~ determines best.

**SECTION 22. AMENDMENT.** Section 34-06-20 of the North Dakota Century Code is amended and reenacted as follows:

**34-06-20. Biennial report of commissioner.** The commissioner shall submit a biennial report ~~as prescribed in to the governor and the secretary of state in accordance with section 54-06-04 to the governor and the office of management and budget.~~

<sup>181</sup> **SECTION 23. AMENDMENT.** Section 36-01-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-11. ~~Reports of board~~ Biennial report.** The state board of animal health ~~shall may~~ submit a report ~~as prescribed by to the governor and the secretary of state in accordance with section 54-06-04 to the governor and the office of management and budget.~~

**SECTION 24. AMENDMENT.** Section 37-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**37-03-05. General duties of adjutant general.** The adjutant general ~~shall be~~ is in active control of the military department of this state and shall:

1. Perform ~~such the~~ duties ~~as pertain~~ pertaining to the adjutant general and other chiefs of staff departments under the regulations and customs of the United States army.
2. Superintend the preparation of all military returns and reports required by the United States from this state.
3. Keep a register of all the officers of the militia and national guard of this state.
4. Keep in ~~his~~ the office of the adjutant general all records and papers required to be kept and filed ~~therein~~ in the office.

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<sup>181</sup> Section 36-01-11 was also amended by section 53 of Senate Bill No. 2505, chapter 347.

5. ~~Submit a biennial report as prescribed by section 54-06-04 to the governor and the office of management and budget. In addition to any requirements established pursuant to section 54-06-04, the report must include a detailed statement of all the expenditures for military purposes during the preceding two fiscal years.~~
6. Cause to be prepared and issued all necessary blank books, blanks, forms, and notices required to carry into full effect ~~the provisions of this title. All such books and blanks shall be and remain~~ are the property of this state.
- ~~7.~~ 6. ~~Make such~~ Adopt any regulations relating to the preparation of reports and returns, and to the care and preservation of military property belonging to this state and to the United States, as in ~~his~~ the adjutant general's opinion the conditions demand. ~~Such~~ The regulations are operative ~~and in force~~ when promulgated in the form of general orders, circulars, or letters of instruction.
- ~~8.~~ 7. Render annually to the governor a statement in detail showing the acquisition and disposition of all clothing, ordnance, arms, ammunition, and other military property on hand or issued.
- ~~9.~~ 8. Keep in ~~his~~ the office of the adjutant general a list of the retired officers of the organized militia, showing age, military experience, and training of each.
- ~~10.~~ 9. Perform ~~such~~ all other duties ~~as are~~ prescribed for ~~him~~ the adjutant general by law.

SECTION 25. A new section to chapter 37-03 of the North Dakota Century Code is created and enacted as follows:

Biennial report. The adjutant general may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. If submitted, the report must include a detailed statement of all the expenditures for military purposes during the preceding two fiscal years.

SECTION 26. AMENDMENT. Section 37-14-09 of the North Dakota Century Code is amended and reenacted as follows:

**37-14-09. Records - Report to governor and office of management and budget**  
Biennial report. The department of veterans' affairs shall keep full records and files of all transactions, applications, advancements, and business pertaining to the veterans' aid fund and shall. The department may submit a biennial report as prescribed by to the governor and the secretary of state in accordance with section 54-06-04 to the governor and the office of management and budget.

SECTION 27. AMENDMENT. Section 37-15-19 of the North Dakota Century Code is amended and reenacted as follows:

**37-15-19. Report of commandant to governor and office of management and budget**  
Biennial report. The commandant of the veterans' home shall may submit a biennial report to the governor and the office of management and budget a biennial report as prescribed by secretary of state in accordance with section 54-06-04.



**SECTION 28. AMENDMENT.** Section 43-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-06. Board to make biennial Biennial report.** The board shall ~~may~~ submit a biennial report to the governor and the ~~office of management and budget as prescribed by secretary of state in accordance with~~ section 54-06-04.

**SECTION 29. AMENDMENT.** Section 43-04-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-19. Report to governor and office of management and budget Biennial report.** The board shall ~~may~~ submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 ~~to the governor and the office of management and budget.~~

**SECTION 30. AMENDMENT.** Section 43-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-05. Powers and duties of state electrical board - Report Biennial report.** The board shall adopt a seal and may ~~make adopt~~ reasonable rules to carry out ~~the provisions of~~ this chapter. The board shall ~~may~~ submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 ~~to the governor and the office of management and budget.~~ The board shall appoint qualified inspectors; ~~who.~~ The inspectors shall inspect, within fifteen days after notice of completion of any electrical wiring installation involving a value of three hundred dollars or more in municipalities having ordinances requiring such inspection, ~~inspect such the~~ electrical installation and approve or condemn the same. ~~A The inspector shall make a report thereof must be made of the inspection on forms prescribed by the board.~~

**SECTION 31. AMENDMENT.** Section 43-10-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-08. Board to report to governor and office of management and budget Biennial report.** The board shall ~~may~~ submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 ~~to the governor and the office of management and budget.~~

**SECTION 32. AMENDMENT.** Section 43-13-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-09. Report to governor and office of management and budget Biennial report.** The board shall ~~may~~ submit a biennial report to the governor and the ~~office of management and budget as prescribed by~~ secretary of state in accordance with section 54-06-04.

**SECTION 33. AMENDMENT.** Section 43-15-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-12. State board of pharmacy - Report.** The board shall ~~may~~ submit a biennial report to the governor and the ~~office of management and budget, and secretary of state in accordance with~~ section 54-06-04. The board shall submit an annual report to the North Dakota pharmaceutical association rendering an account of all moneys received and disbursed by it. The report to the governor and the office of management and budget must be as prescribed by section 54-06-04.

**SECTION 34. AMENDMENT.** Section 43-17-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-12. Board to make biennial ~~Biennial~~ report to governor and office of management and budget.** The board ~~shall~~ may submit a biennial report to the governor and the office of management and budget as prescribed by secretary of state in accordance with section 54-06-04.

**SECTION 35. AMENDMENT.** Section 43-23-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-02. Commission - Term - Duties - Records.** ~~The members governor shall appoint each member of the commission must be appointed by the governor for a term of five years; Terms must be staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor shall appoint a successor for a term of five years. In the event of a vacancy on the commission for any reason the governor shall appoint a member for the unexpired term of that member.~~

A majority of the commission, in a duly assembled meeting duly assembled, may perform and exercise all of the duties and powers devolving on the commission. The commission ~~shall~~ may submit a biennial report as prescribed by to the governor and the secretary of state in accordance with section 54-06-04 ~~to the governor and the office of management and budget.~~

The commission shall adopt a seal with North Dakota real estate commission engraved ~~thereon on the seal~~, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of such commission, must be received in evidence in all courts equally and with like effect as the original.

**SECTION 36. AMENDMENT.** Section 43-28-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-09. Report to governor and office of management and budget ~~Biennial~~ report.** The board ~~shall~~ may submit a report as prescribed by to the governor and the secretary of state in accordance with section 54-06-04 ~~to the governor and the office of management and budget.~~

**SECTION 37. AMENDMENT.** Section 46-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**46-02-04. Classes of printing - Contracts.** The printing of the state is divided into the following classes:

1. The printing of ~~legislative documents for the use~~ bills and resolutions of the legislative assembly constitutes the first class. ~~For the purposes of this subsection, the words "legislative documents" mean bills and resolutions.~~ However, certain bills and resolutions may be excepted from this class, as directed by officers of the legislative assembly or as provided for in the rules of the senate and the house of representatives.
2. The printing and binding of the journals of the senate and the house of representatives constitutes the second class.

3. The printing and binding of the reports and other documents ~~required by state law to be that are~~ prepared and submitted to the governor and the office of management and budget secretary of state, and which make up the governmental biennial reports ~~as prescribed by in accordance with~~ sections 54-06-03 and 54-06-04, constitutes the third class. This class does not include the official budget report.
4. The printing and binding of the volumes of laws and legislative resolutions constitutes the fourth class.
5. All printing not included in the foregoing classes constitutes the sixth class.

Separate contracts for classes 3 and 4 must be let by the office of management and budget under competitive bidding in accordance with this title. Contracts for classes 1 and 2 must be let by competitive bidding by the office of management and budget in accordance with the rules of the senate and the house of representatives of the previous legislative session or as directed by the legislative council.

**SECTION 38. AMENDMENT.** Section 49-01-13 of the North Dakota Century Code is amended and reenacted as follows:

**49-01-13. Biennial report to governor and department of accounts and purchases.** The commission shall submit a report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 ~~to the governor and the department of accounts and purchases.~~

**SECTION 39. AMENDMENT.** Section 52-02-03 of the North Dakota Century Code is amended and reenacted as follows:

**52-02-03. Bureau to Biennial report biennially to governor and office of management and budget - Contents of report - Recommendations by bureau.** The bureau shall submit a biennial report to the governor and the office of management and budget a biennial report as prescribed by secretary of state in accordance with section 54-06-04. Whenever the bureau believes that a change in contribution or benefit rates shall become necessary to protect the solvency of the fund, it shall inform the governor and the legislative assembly promptly and make recommendations with respect thereto.

**SECTION 40. AMENDMENT.** Section 52-10-09 of the North Dakota Century Code is amended and reenacted as follows:

**52-10-09. Studies and reports.** The state agency shall submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 ~~to the governor and the office of management and budget.~~

**SECTION 41. AMENDMENT.** Section 54-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-03. Report of state officers and boards.** Except as otherwise provided by law, all officers, departments, boards, commissions, and state institutions ~~which are required to that~~ make and transmit reports annually or biennially to the governor and the office of management and budget secretary of state shall submit ~~such their~~ reports to the governor and the office of management and budget secretary of state not later than December first of the year in which ~~such the~~ report is required to be made.

<sup>182</sup> **SECTION 42. AMENDMENT.** Section 54-06-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-06-04. Form and number of reports to be submitted.**

1. The following executive and administrative officers and departments shall submit to the governor and the ~~office of management and budget~~ secretary of state reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
  - a. Secretary of state.
  - b. State auditor.
  - c. Commissioner of insurance.
  - d. Attorney general.
  - e. Commissioner of agriculture.
  - f. Superintendent of public instruction.
  - g. State tax commissioner.
  - h. Public service commission.
  - i. ~~State board of higher education.~~
  - j. Department of corrections and rehabilitation.
  - ~~k.~~ j. Department of transportation.
  - ~~l.~~ k. State department of health and consolidated laboratories.
  - ~~m.~~ l. Department of human services.
  - ~~n.~~ m. Workers compensation bureau.
  - ~~o.~~ n. ~~Director of the office~~ Office of management and budget.
  - ~~p.~~ o. State treasurer.
  - ~~q.~~ p. Commissioner of labor.
  - q. Department of banking and financial institutions.
  - r. Department of economic development and finance.

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<sup>182</sup> Section 54-06-04 was also amended by section 2 of House Bill No. 1058, chapter 243.

- s. Game and fish department.
  - t. Industrial commission.
  - u. Job service North Dakota.
  - v. Board of university and school lands.
2. A committee composed of the superintendent of the state historical board, the state librarian, and the ~~director of the office of management and budget~~ secretary of state, or ~~such~~ other persons as may be designated by ~~such persons~~ to represent them, shall meet at the call of the ~~director of the office of management and budget~~ secretary of state to set the requirements which must be prescribed by the office of management and budget for form, style, materials, and content of biennial reports required by law.
3. The director of the budget and the legislative council shall make biennial reports as prescribed by law, which may, at their discretion, be included in the governmental biennial reports.
4. This section does not prohibit the executive and administrative officers and departments enumerated in subsection 1 from receiving such additional copies of their reports as may be available and printed in pamphlet form by the office of management and budget for the purpose of distribution as the administrative officers and departments shall deem necessary.
- 5- 4. All officers, departments, boards, commissions, and state institutions required to ~~that~~ submit reports covering their operations for the two preceding fiscal years to the governor and the ~~office of management and budget~~ secretary of state shall submit copies of their reports in the form and style, using the materials, and having the content prescribed under the provisions of subsection 2 on or before the first day of December in each year after the regular session of the legislative assembly. ~~One If submitted, one copy of each report must be submitted to the governor and two copies to the office of management and budget. The office of management and budget shall cause to be prepared twenty-five copies of each report submitted under the provisions of this subsection which must be distributed to the following agencies:~~
- a. Governor's office.
  - b. ~~Attorney general's office.~~
  - c. Legislative council.
  - d. Office of management and budget.
  - e. State law library.
  - f. The libraries of each state ~~institutions~~ institution of higher education.
  - g. State library.

- g. Two copies of each report must be placed in the office of to the secretary of state archivist for official and public use.

The reports included in this subsection may not be further printed or reproduced except as provided for in this subsection and section 54-06-05.

- 6- 5. All executive and administrative officers and departments ~~responsible for submitting that submit~~ reports under the provisions of this section shall bear the costs of the preparation and any printing of the reports.
7. ~~Any executive and administrative officers and departments not required to submit a report by law, but electing to do so, shall submit such report under the provisions of subsection 5.~~

SECTION 43. AMENDMENT. Section 54-09-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-02. Duties of secretary of state. In addition to the duties prescribed by the constitution, the secretary of state shall:

1. Attend every session of the legislative assembly for the purpose of receiving bills and resolutions therefrom, and shall perform such other duties as may devolve upon him the secretary of state by resolution of the two houses, or either of them.
2. Keep a register of and attest the official acts of the governor.
3. Affix the great seal with ~~his~~ the secretary of state's attestation to commissions and other public instruments to which the official signature of the governor is required.
4. Record in proper books all conveyances made to the state and all articles of incorporation filed in ~~his~~ the secretary of state's office.
5. Receive and record in the proper books the official bond of any state official who furnishes in lieu of the bond furnished by the state bonding fund a bond by a duly authorized surety company.
6. Take and file in ~~his office~~ receipts for all books distributed by ~~him~~ the secretary of state and direct the county auditor of each county to do the same.
7. Furnish on demand to persons paying the fees therefor a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in ~~his~~ the secretary of state's office.
8. Keep a fee book in which ~~shall~~ must be entered all the fees, commissions, and compensation of whatever nature or kind ~~by him~~ earned, collected, or charged by the secretary of state, with the date, name of payor, and the nature of the services in each case. ~~Such~~ The book must be verified annually by ~~his~~ affidavit of the secretary of state entered therein.
9. Biennially report to the governor with copies filed in ~~his~~ the secretary of state's office as prescribed by section 54-06-04 all moneys received from

any source for services performed, and accompany such report with a detailed statement under oath of the manner in which the appropriations for his the secretary of state's office have been expended during the preceding two fiscal years.

10. Immediately after the laws, resolutions, and journals of the legislative assembly are bound, distribute the laws, resolutions, and journals to the persons entitled thereto by law or rules of the senate and house of representatives.
11. Keep a registry of cities.
12. Indicate on each bill passed by the legislative assembly the date of filing in the secretary of state's office.
13. Perform ~~such~~ all other duties as are prescribed by law.

**SECTION 44. AMENDMENT.** Section 54-10-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-10-01. Powers and duties of state auditor.** The state auditor shall:

1. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of the state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
2. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state and perform or provide for the audits and reviews of state agencies, including occupational or professional boards provided for by law. The state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for any agency that receives and expends both general fund and nongeneral fund moneys. The state auditor shall require any agency in the executive branch of government, which includes an institution of higher education, to pay for a contract for the audit or review of that agency. Except for an audit or review of an occupational or professional board, the state auditor shall execute any contract under this subsection. The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. If the report is in the form and style as prescribed by the state auditor, the state auditor may not audit that board. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.
3. Perform or provide for performance audits of state agencies as determined necessary by the state auditor or the legislative audit and

fiscal review committee. A performance audit must include reviewing elements of compliance, economy and efficiency, and program results to determine whether an agency is complying with applicable laws and legislative intent and is managing its resources efficiently, and whether the agency's programs are achieving desired results.

4. Be responsible for the above functions and report thereon to the governor and the ~~office of management and budget as prescribed by secretary of state in accordance with~~ section 54-06-04 or more often as circumstances may require.
5. Perform ~~such~~ all other duties as prescribed by law.

**SECTION 45. AMENDMENT.** Section 54-11-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-11-01. Duties of state treasurer.** The state treasurer shall:

1. Receive and keep all the moneys belonging to the state not required to be received and kept by some other person.
2. Register the orders or certificates of the office of management and budget delivered to ~~him~~ the state treasurer when moneys are paid or to be paid into the treasury.
3. Prepare a receipt for each deposit of money into the treasury. The receipt must show the amount, the source from which the money accrued, and the funds into which it is paid. The receipts must be numbered in order. Duplicates, if requested, must be delivered to the office of management and budget and the person paying money into the treasury.
4. Pay warrants drawn by the office of management and budget and signed by the state auditor out of the funds upon which they are drawn, and in the order in which they are presented.
5. Keep an account of all moneys received and disbursed.
6. Keep separate accounts of the different funds.
7. Keep a record of all revenues and expenditures of state agencies and all moneys received and disbursed by the treasurer in accordance with the requirements of the state's central accounting system.
8. Receive in payment of public dues the warrants drawn by the office of management and budget and signed by the state auditor in conformity with law.
9. Redeem warrants drawn by the office of management and budget and signed by the state auditor in conformity with law, if there is money in the treasury appropriated for that purpose.
10. Report to the office of management and budget on the last day of each month the amount disbursed for the redemption of bonds and the payment of warrants during the month; ~~such reports to.~~ The report must show:



- a. The date and number of each bond and warrant;
  - b. The fund out of which each was paid; and
  - c. The balance in cash on hand in the treasury to the credit of each fund.
11. At the request of either house of the legislative assembly, or of any committee thereof, give information in writing as to the condition of the treasury, or upon any subject relating to the duties of ~~his~~ office.
  12. Submit a biennial report to the governor and the ~~office of management and budget as prescribed by~~ secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must show the exact balance in the treasury to the credit of the state. The report also must show in detail the receipts and disbursements, together with a summary thereof, the balances in the various funds at the beginning and ending of the biennium, and also must show where the funds of the state are deposited. It must be certified by the state treasurer and approved by the governor.
  13. Authenticate with ~~his~~ the official seal of the state treasurer all writings and papers issued from ~~his~~ the treasurer's office.
  14. Keep a book in which ~~he~~ the state treasurer shall enter all warrants paid, giving the name of the owner and the number and amount of each warrant.
  15. Keep and disburse all moneys belonging to the state in the manner provided by law.
  16. Keep ~~his~~ books of the state treasurer open at all times for the inspection of the governor, the state auditor, the commissioner of banking and financial institutions, the office of management and budget, and any committee appointed to examine them by either house of the legislative assembly.
  17. Unless otherwise specified by law, credit all income earned on the deposit or investment of all state moneys to the state's general fund; ~~provided that this provision.~~ This subsection does not apply to:
    - a. Income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission.
    - b. Income earned by the Bank of North Dakota for its own account on state moneys that are deposited in or invested with the Bank.
    - c. Income earned on college and university funds not deposited in the state treasury.
  18. Perform ~~such~~ all other duties as are prescribed by law.

**SECTION 46. AMENDMENT.** Section 54-12-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-12-05. Report of attorney general to governor and office of management and budget Biennial report.** The attorney general shall ~~make submit~~ a biennial report to the governor and the ~~office of management and budget as prescribed by~~ secretary of state in accordance with section 54-06-04. ~~In addition to any requirements established pursuant to section 54-06-04, the~~ The report must state:

1. The number, character, condition, and result of the actions prosecuted or defended by ~~him~~ the attorney general in behalf of the state.
2. The cost of prosecuting or defending each action.
3. The amount of fines and penalties collected.

~~He~~ The attorney general also shall direct attention to any defect in the practical operations of the law relating to revenue and criminal offenses, and shall suggest ~~such~~ amendments and changes as in ~~his~~ the attorney general's judgment are necessary to subserve the public interest.

**SECTION 47. AMENDMENT.** Section 54-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-06. Biennial report of commission.** The industrial commission shall submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 ~~to the governor and the office of management and budget. In addition to any requirements established pursuant to section 54-06-04, the~~ The report must contain a meaningful financial statement of each utility, industry, enterprise, and business project under its control.

**SECTION 48. AMENDMENT.** Section 54-36-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-36-06. Report and recommendations.** The Indian affairs commission may submit its recommendations to the legislative assembly in the form of proposed legislation or resolutions and may submit a report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 ~~to the governor and the office of management and budget.~~

**SECTION 49. AMENDMENT.** Section 54-42-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-42-05. Biennial report.** The merit system council shall submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 ~~to the governor and the office of management and budget.~~

<sup>183</sup> **SECTION 50. AMENDMENT.** Section 54-44.3-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>183</sup> Section 54-44.3-07 was also amended by section 2 of House Bill No. 1501, chapter 524.

**54-44.3-07. Duties of board.** The primary responsibility of the board is to foster and assure a system of personnel administration in the classified service of state government. In carrying out this function it, the board shall:

1. ~~Promulgate such~~ Adopt any rules and hold ~~such any~~ hearings as are necessary to properly perform the duties, functions, and powers imposed on or vested in it the board by law. The ~~promulgation adoption~~ of rules must be accomplished in accordance with ~~provisions of~~ chapter 28-32.
2. Review and hear comments from any concerned individuals, departments, or agencies, or their representatives, on any rules ~~or modifications thereof~~ adopted by the personnel division. ~~Such a rule or modification will be~~ is effective upon implementation by the division; however, if the board finds that the rule constitutes poor administrative practice, is arbitrary, capricious, contrary to the spirit or intent of the personnel system, or otherwise contrary to law, it may disapprove the rule ~~or modification~~ on that basis, thus repealing the concerned rule ~~or modification~~.
3. Hear, consider, and determine appeals by nonprobationary employees in the classified service from agency grievance procedures under section 54-44.3-12.2 related to position classifications, pay grade assignments, merit system qualification, discrimination, reprisals, reduction-in-force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal. The board may assign the initial hearing of an appeal to an administrative hearing officer for the receipt of evidence and the preparation of findings of fact, conclusions of law, and a recommended decision under chapter 28-32. The board's decision on an appeal shall resolve the issues presented between the employer and employee, and the board may order any needed remedy, including affirming, modifying, or reversing the employer's decision, vacating suspensions, directing back pay and adjustments to back pay, and reinstatement to the classified service.
4. Submit a biennial report as prescribed by section 54-06-04 of its activities and the operation of this state's personnel system.
5. Keep ~~such~~ minutes and maintain ~~such~~ records ~~as are~~ necessary to assure the equitable administration of this chapter.

**SECTION 51. AMENDMENT.** Section 54-46-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-11. Biennial report.** The biennial report of the director of the office of management and budget ~~as required by~~ made in accordance with sections 54-06-04 and 54-44-04 must describe the status and progress of programs established pursuant to this chapter and must include the recommendations of the administrator for improvements in the management of records in the state government.

<sup>184</sup> SECTION 52. AMENDMENT. Section 57-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-01-02. Powers and duties. The tax commissioner:**

1. Shall perform all the duties ~~enjoined~~ imposed upon ~~him~~ the tax commissioner by law.
2. Shall exercise general supervision over all assessors of general property or other taxes, over township, county, and city boards of equalization and over all other assessing officers, in the performance of their duties, to the end that all assessments of property be made relatively just and equal in compliance with the laws of the state.
3. Shall direct actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishments of persons, officers of corporations, limited liability companies, public officers, and others, for failure or neglect to comply with the provisions of law governing the returns, assessments, and taxation of property, income, or other objects of taxation, cause complaints to be made against officers for neglect or refusal to comply with the law, and generally shall enforce all tax proceedings and revenue laws of the state in the proper courts.
4. May require state's attorneys of the several counties to assist in the commencement and prosecution of actions and proceedings for the violation of any laws in respect to assessment or taxation.
5. May require township, city, county, and other public officers to report information as to the assessment and collection of property and other taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful in the administration of the tax laws, in such form and upon such blanks as ~~he~~ the tax commissioner may prescribe.
6. May summon witnesses to appear and give testimony and produce books, records, papers, and documents relating to any matter which ~~he~~ the tax commissioner or the state board of equalization may have authority to investigate or determine, and may cause the depositions of witnesses residing within or without the state, or temporarily absent therefrom, to be taken, upon notice to the interested parties, if any, in like manner as depositions of witnesses are taken in civil actions in the district court.
7. May require a reassessment of property in any county to be made in accordance with chapter 57-14, whenever that is deemed necessary, or may require county auditors to place on the assessment rolls property which may be discovered and which has not been taxed according to law.

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<sup>184</sup> Section 57-01-02 was also amended by section 1 of House Bill No. 1450, chapter 544.

8. Shall examine carefully all cases where evasions or violations of the laws of assessment and taxation of property or other objects or subjects of taxation are alleged, complained of, or discovered, and shall ascertain wherein existing laws are defective or are administered improperly or negligently.
9. Shall submit a biennial report to the governor and the office of management and budget as prescribed by secretary of state in accordance with section 54-06-04 the biennial. The report must contain the biennial report of the ~~commissioner~~ and state board of equalization.
10. Shall visit other states and confer with taxing officials and attend tax or other economic conferences or conventions, in person or by ~~his~~ the tax commissioner's authorized agent.
11. Shall certify all levies, assessments, equalizations, or valuations made by ~~him~~ the tax commissioner or the state board of equalization, not more than thirty days after the same have been made, or at periods otherwise provided by law.
12. ~~Shall have the power to~~ May execute reciprocal agreements with the appropriate officials of any other state under which ~~he~~ the tax commissioner may waive all or any part of the requirements imposed by the laws or statutes of this state upon those who use or consume in ~~the this state of North Dakota~~, gasoline, other motor vehicle fuel, or special fuel upon which the tax has been paid to ~~such that~~ other state; provided, that the officials of ~~such that~~ other state grant the equivalent privileges with respect to gasoline, other motor vehicle fuel, or special fuel used in ~~such that~~ other state upon which the tax has been paid to ~~the this state of North Dakota~~.
13. May maintain an accounting system ~~which that~~ includes a special category of accounts designated as noncurrent accounts. ~~Said~~ The noncurrent accounts ~~shall must~~ be those accounts ~~which that~~ are uncollectible as a matter of law or those accounts where all reasonable collection efforts over a period of six years have produced no results. After examination by the state auditor, and upon ~~his~~ the state auditor's recommendation for cause, specific accounts may be removed by the commissioner from noncurrent status and all records pertaining thereto immediately destroyed.
14. May wave, upon a showing of good cause, ~~waive~~ any and all tax due. A lien must have been filed against the debtor's property prior to the request for a waiver. The attorney general shall approve the waiver must be approved by the attorney general.
15. a. May require, consistent with the cash management policies of the office of management and budget, that any taxpayer owing one hundred thousand dollars or more in connection with any return, report, or other document to be filed with the commissioner shall pay the tax liability to the state no later than the date the payment is required by law to be made in funds which are immediately available to the state on the date of payment. Payment in immediately available funds may be made by wire transfer of funds through the federal reserve system or by any other means established by the commissioner which ensures the availability of

the funds to the state on the date of payment. Evidence of the payment must be furnished to the commissioner on or before the due date of the tax as established by law. Failure to timely make the payment in immediately available funds or failure to provide evidence of payment in a timely manner subjects the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments. If payment is timely made in other than immediately available funds, penalty and interest must be added to the amount of tax due from the due date of the tax payment to the date that funds from the tax payment become available to the state.

- b. May establish by rule periodic filing and payment dates that are subsequent to the dates otherwise established by law for any taxes collected by the commissioner in those instances where the commissioner deems it to be in the best interest of the state, provided that the alternative date may not be later than the last day of the month in which the tax was otherwise due.
- c. May adopt rules necessary for the administration of this subsection.

**SECTION 53. AMENDMENT.** Section 61-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-04. Report of state engineer to governor and office of management and budget Biennial report.** The state engineer ~~shall~~ may submit a biennial report to the governor and the ~~office of management and budget as prescribed by~~ secretary of state in accordance with section 54-06-04.

**SECTION 54. AMENDMENT.** Section 61-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**61-04.1-10. Report to governor Biennial report.** The board ~~shall~~ may prepare and transmit a biennial report to the governor ~~describing in accordance with~~ sections 54-06-03 and 54-06-04. If submitted, the report must describe the research and development activities conducted during the biennium, and the outcome thereof, and other related work and activities. ~~The report shall be submitted in accordance with sections 54-06-03 and 54-06-04.~~

**SECTION 55. AMENDMENT.** Section 65-02-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-09. General information to public - Biennial report of bureau.** The bureau, from time to time, may publish and distribute among employers and employees general information as to the business transacted by the bureau as in its judgment may be useful. The director shall ~~make~~ submit a biennial report ~~as prescribed by to the governor and the secretary of state in accordance with~~ section 54-06-04 to the governor and the office of management and budget. In addition to any requirements established pursuant to section 54-06-04, the The report must include:

1. A statement of the number of awards made by it.
2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
3. A detailed statement of the disbursements from the fund.

4. A statement of the conditions of the various funds carried by the bureau.
5. Any other matters which the bureau wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.

**SECTION 56. REPEAL.** Section 54-06-05 of the North Dakota Century Code is repealed.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 351

### HOUSE BILL NO. 1249

(Representatives Martinson, Gerntholz, Belter)  
(Senators Goetz, Nething, Redlin)

## NATIONAL GUARD TUITION WAIVERS

AN ACT to create and enact a new section to chapter 37-07.1 of the North Dakota Century Code, relating to tuition reimbursement payments; to amend and reenact sections 37-07.1-03 and 37-07.2-01 of the North Dakota Century Code, relating to tuition waivers and grants; and to repeal section 37-07.1-06 of the North Dakota Century Code, relating to tuition payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-07.1 of the North Dakota Century Code is created and enacted as follows:

Tuition reimbursement - Payments. The adjutant general shall make tuition reimbursement payments, within the limits of legislative appropriations, to any state-controlled school for each qualifying member of the national guard enrolled in that school who receives a tuition waiver provided in section 37-07.1-03.

SECTION 2. AMENDMENT. Section 37-07.1-03 of the North Dakota Century Code is amended and reenacted as follows:

~~37-07.1-03. Tuition assistance - Waiver of tuition fees waiver - Terms. Any qualifying member of the national guard who enrolls in any state-controlled school may shall, subject to the limitations of available appropriated funds and subject to national guard rules that may be promulgated by the adjutant general, receive tuition assistance in an amount not to exceed fifty percent a waiver of the tuition fees charged by the school. In addition, the qualifying member may be entitled to the waiver of an amount, as determined by the adjutant general pursuant to national guard rules, not to exceed twenty-five percent of the tuition fees of the school and not to exceed fifty percent of the amount of tuition assistance paid by the adjutant general. The tuition assistance and waiver are is valid only so long as the member of the national guard maintains satisfactory performance with the guard, meets the qualification requirements of rules promulgated by the adjutant general, and pursues a course of study in a manner which satisfies the normal requirements of the school.~~

SECTION 3. AMENDMENT. Section 37-07.2-01 of the North Dakota Century Code is amended and reenacted as follows:

~~37-07.2-01. National guard tuition grants - Terms of grants. Any qualifying member of the national guard who enrolls in any private nonprofit college or university in North Dakota granting a four-year baccalaureate degree may, subject to the limitations of available appropriated funds and subject to national guard rules that may be promulgated by the adjutant general, receive a grant in an amount not to exceed fifty percent of the tuition fees charged by the school, but not in excess of the tuition equal to the payments made pursuant to chapter 37-07.1 for similar courses and credit hours for each qualifying member of the national guard who is enrolled at the university of North Dakota. Any private nonprofit college or university that agrees to participate in such a program must waive tuition for~~



qualifying national guardsmen in an amount; ~~as determined by the adjutant general pursuant to national guard rules; not to exceed twenty-five percent of equal to the difference between the tuition grant received by the national guard member and the tuition charged~~ for similar courses and credit hours at the university of North Dakota. The use of the grant may not be restricted to the payment of tuition fees by the member of the national guard. These grants must be distributed according to rules promulgated by the adjutant general and are available only so long as the member maintains satisfactory performance with the guard, meets the qualification requirements of the rules, and pursues a course of study which satisfies the normal requirements of the school. As used in this chapter the word "tuition" has the same meaning as provided in section 37-07.1-02.

**SECTION 4. REPEAL.** Section 37-07.1-06 of the North Dakota Century Code is repealed.

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 352****HOUSE BILL NO. 1419**  
(Representatives Huether, Grumbo)**VETERANS' HOME DONATIONS**

AN ACT to amend and reenact section 37-15-21 of the North Dakota Century Code, relating to funds available to the veterans' home.

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

**SECTION 1. AMENDMENT.** Section 37-15-21 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**37-15-21. Commandant may accept gifts, donations, or bequests.** The commandant for and in behalf of the veterans' home is hereby authorized to accept and expend funds from any source, including federal or private sources; ~~interest earnings from the veterans' postwar trust fund;~~ and donations, gifts, or bequests offered or tendered to, or for the benefit of, the veterans' home to be used to benefit the veterans' home ~~as authorized by the administrative committee on veterans' affairs with the approval of the emergency commission.~~ All such moneys received or accepted must be used for the specific purposes for which they were given or donated. This authority shall apply and be retroactive to any or all gifts, donations, or bequests heretofore tendered, offered, or made. The veterans' home may establish and maintain its own local fund to administer moneys received under this section. All interest, rent, or income from moneys or property received under this section must be deposited in the veterans' home improvement fund unless by the terms of acquisition, the moneys are required to be maintained in a different manner.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 353

### SENATE BILL NO. 2309

(Senators B. Stenehjem, Lips, Thane)  
(Representatives Maragos, Retzer, Schmidt)

## VETERANS' PREFERENCE ELIGIBILITY AND DEFINITIONS

AN ACT to amend and reenact section 37-19.1-01 and subsection 5 of section 37-19.1-02 of the North Dakota Century Code, relating to definitions under the veterans' preference laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>185</sup> SECTION 1. AMENDMENT. Section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-01. Definitions. As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ persons either temporarily or permanently.
2. "Chief deputy" means the person who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include a person appointed to a position that must be filled under an established personnel system.
3. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
- ~~3+~~ 4. "Personnel system" means a personnel system based on merit principles.
- ~~4+~~ 5. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs persons either temporarily or permanently.
6. "Private secretary" means the person who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include a person appointed to a position that must be filled under an established personnel system.

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<sup>185</sup> Section 37-19.1-01 was also amended by section 1 of House Bill No. 1478, chapter 354.

- 5- 7. "Veteran" means a wartime veteran as defined in subsection 2 of section 37-01-40.

<sup>186</sup> SECTION 2. AMENDMENT. Subsection 5 of section 37-19.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The provisions of this section do not apply when the position to be filled is that of a superintendent of schools, teacher, or the chief deputy or private secretary of an elected or appointed official, the chancellor and vice chancellors of the board of higher education, presidents or executive deans, vice presidents, assistant to the president, provosts, and instructors of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section.

Approved April 4, 1995  
Filed April 4, 1995

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<sup>186</sup> Section 37-19.1-02 was also amended by section 2 of House Bill No. 1478, chapter 354.

**CHAPTER 354****HOUSE BILL NO. 1478**

(Representatives Christenson, Clayburgh, Glassheim)

**VETERANS' PREFERENCES RESIDENCY  
REQUIREMENTS**

AN ACT to amend and reenact subsection 5 of section 37-19.1-01 and subsection 1 of section 37-19.1-02 of the North Dakota Century Code, relating to the definition of veterans for the purpose of veterans' preferences and public employment preference to veterans.

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

<sup>187</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Veteran" means a North Dakota resident who is a wartime veteran as defined in subsection 2 of section 37-01-40.

<sup>188</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 37-19.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Veterans ~~who are North Dakota residents~~ are entitled to preference, over all other applicants, in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless ~~such~~ the disability renders them unable to properly perform the duties of the position applied for.

Approved April 7, 1995  
Filed April 7, 1995

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<sup>187</sup> Section 37-19.1-01 was also amended by section 1 of Senate Bill No. 2309, chapter 353.

<sup>188</sup> Section 37-19.1-02 was also amended by section 2 of Senate Bill No. 2309, chapter 353.

## CHAPTER 355

### SENATE BILL NO. 2121

(Government and Veterans Affairs Committee)  
(At the request of the Office of Administrative Hearings)

## VETERANS' PREFERENCE GRIEVANCE HEARINGS

AN ACT to amend and reenact section 37-19.1-04 of the North Dakota Century Code, relating to hearing procedures for veterans' preference grievance hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 37-19.1-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-04. Refusal to give preference - Retaliatory action or removal - Remedies - Procedures.**

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in ~~sections~~ section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen days after notification by certified mail that employment has been refused, may request a hearing before a hearing officer as provided in subsection 3. The applicant's request must be in writing, must include the employer's notification that employment has been refused, and must be delivered to the commissioner of veterans' affairs by certified mail with return receipt requested. A copy of the written request must be mailed to the employer or employing agency. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, if the hearing officer finds in favor of the applicant.
2. Any person who has exercised the right to an employment preference under this chapter, and who, within one year after exercise of that right:
  - a. Is discharged;
  - b. Has had compensation reduced; or
  - c. Is otherwise subject to action by the employing agency designed to cause the veteran or qualified veteran's spouse to resign or quit employment,

is entitled to a hearing if the person believes that the employing agency took any of the above-described action due to the exercise of employment preference. The hearing must be held before ~~the~~ a hearing officer as provided in subsection 3. If the hearing officer finds that the employing agency took any of the actions described in subdivision a, b, or c due to the person's exercise of the right to an employment preference, the hearing officer shall order the employing agency to cease and desist from such action or to reinstate the veteran or qualified veteran's spouse. The request for a hearing under this subsection must

be in writing addressed to the commissioner of veterans' affairs. The request for a hearing must identify the employer or employing agency that took any action described in subdivision a, b, or c and describe the action taken. A copy of the written request must be mailed to the employer or employing agency. The request, addressed to the commissioner of veterans' affairs, must be made by certified mail with return receipt requested within fifteen days after any action described in subdivision a, b, or c is taken by the employing agency.

3. At the request of Within fifteen days after receiving a request from an applicant or person under subsection 1 or 2, the commissioner of veterans' affairs; ~~the attorney general shall appoint~~ request the director of the office of administrative hearings to designate a hearing officer knowledgeable in personnel administration to hear grievances the grievance arising under subsection 1 or 2. The commissioner shall notify the employer or employing agency that a request for a hearing has been made. The hearing officer office of administrative hearings is entitled to be reimbursed by the employer or employing agency for all hearing officer services rendered and expenses incurred in performing these duties. The hearing officer shall hold the hearing within fifteen thirty days after the hearing is requested by the commissioner of veterans' affairs officer request is received by the director of the office of administrative hearings. Notwithstanding the time limitation, the hearing officer may postpone or continue the hearing for good cause, at the request of a party. At the hearing, both parties may be represented by counsel. If the hearing is requested pursuant to subsection 1, the employing agency has the burden of proving that the veteran or the qualified veteran's spouse did not possess the qualifications required for the position. If the hearing is requested pursuant to subsection 2, the employing agency has the burden of proving that any action which was taken was not taken because of exercise of the right to an employment preference. The hearing officer shall issue findings of fact, conclusions of law, and an order within fifteen days after the hearing is concluded, briefs filed, and arguments closed. The order is binding on both parties, subject to appeal.
4. Any party aggrieved by the ~~finding~~ findings of fact, conclusions of law, and order of the hearing officer may appeal in the manner provided for in chapter 28-32, provided except that notice of appeal need only be served on the other party; and the appellant need not execute an undertaking. Any party aggrieved by the decision of the district court may appeal that decision to the supreme court as provided in chapter 28-32. Appeals to the district court under this subsection must be heard without a jury.

Approved March 15, 1995

Filed March 15, 1995

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 356

**HOUSE BILL NO. 1210**  
(Representatives Martin, Brown)  
(Senator Urlacher)

### OIL AND GAS RESERVE PITS

AN ACT to create and enact a new subsection to section 38-08-02 and a new section to chapter 38-08 of the North Dakota Century Code, relating to recording the location of oil and gas reserve pits.

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

**SECTION 1.** A new subsection to section 38-08-02 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

“Reserve pit” means an excavated area used to contain drill cuttings accumulated during oil and gas drilling operations and mud-laden oil and gas drilling fluids used to confine oil, gas, or water to its native strata during the drilling of an oil and gas well.

**SECTION 2.** A new section to chapter 38-08 of the North Dakota Century Code is created and enacted as follows:

**Plats.** Any person reclaiming a reserve pit after the completion of oil and gas drilling operations shall record an accurate plat certified by a registered surveyor showing the location of the well and notice that an abandoned reserve pit may be on the location within six months of the completion of the reclamation with the register of deeds of the county in which the reserve pit is located. A plat filed for record in accordance with this section may be recorded without acknowledgment or further proof as required by chapter 47-19 and without the auditor’s certificate referred to in section 11-18-02.

Approved April 11, 1995  
Filed April 12, 1995



**CHAPTER 357****HOUSE BILL NO. 1159**

(Industry, Business and Labor Committee)  
(At the request of the Industrial Commission)

**INDUSTRIAL COMMISSION HEARINGS**

AN ACT to amend and reenact subsection 3 of section 38-08-11 of the North Dakota Century Code, relating to notice of hearings in industrial commission proceedings.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 38-08-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Any notice required by this chapter must be given at the election of the commission either in accordance with chapter 28-32 or by one publication in a newspaper of general circulation in the state capital and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice must issue in the name of the state, must be signed by the chairman or secretary of the commission, and must specify the style and number of the proceeding, the time and place of the hearing, and must briefly state the purpose of the proceeding. Should the commission elect to give notice by personal service, such service may be made by any officer authorized to serve process, or by any agent of the commission, in the same manner as is provided by law for the service of summons in civil actions in the courts of the state. Proof of the service by such agent must be by the affidavit of the person making personal service. In proceedings that do not involve a complaint and a specifically named respondent, including agency hearings on applications seeking some right or authorization from the commission, the notice of hearing must be given at least fifteen days before the hearing, except in cases of emergency.

Approved March 28, 1995  
Filed March 29, 1995

**CHAPTER 358****HOUSE BILL NO. 1158**

(Industry, Business and Labor Committee)  
(At the request of the Industrial Commission)

**OIL AND GAS WELLHEAD WELDER CERTIFICATION**

AN ACT to repeal section 38-08-22 of the North Dakota Century Code, relating to regulation of oil and gas wellhead welders.

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

**SECTION 1. REPEAL.** Section 38-08-22 of the 1993 Supplement to the North Dakota Century Code is repealed.

Approved March 1, 1995

Filed March 2, 1995

**CHAPTER 359****HOUSE BILL NO. 1157**

(Natural Resources Committee)

(At the request of the North Dakota Geological Survey)

**COAL EXPLORATION VIOLATIONS**

AN ACT to amend and reenact section 38-12.1-08 of the North Dakota Century Code, relating to the penalty for improper coal exploration activities; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 38-12.1-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**38-12.1-08. Civil and criminal penalties - Unclassified.**

1. Any person, including a director, officer, or agent of a corporate permittee, who violates this chapter, or any permit condition or regulation implementing this chapter is subject to a civil penalty not to exceed five thousand dollars per day of such violation.
2. Any person, including a director, officer, or agent of a corporate permittee, who knowingly or willfully violates this chapter, or any permit condition or regulation implementing this chapter or who knowingly reports information required by this chapter falsely is subject, upon conviction, to a criminal penalty of not more than ten thousand dollars or by imprisonment for not more than one year.
3. Any corporation or any person who controls the activity of a corporation who violates this chapter or any permit condition or rule implementing this chapter is subject to a civil penalty not to exceed five thousand dollars per day of such violation.

Approved March 14, 1995

Filed March 14, 1995

**CHAPTER 360****SENATE BILL NO. 2107**

(Natural Resources Committee)

(At the request of the Public Service Commission)

**COAL MINE OPERATOR COST REIMBURSEMENT**

AN ACT to amend and reenact subsection 4 of section 38-14.1-37 of the North Dakota Century Code, relating to reimbursement of the public service commission for small coal mine operator costs.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 38-14.1-37 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. An operator who has received assistance under ~~subsection~~ subsections 2 or 3 shall reimburse the commission for the cost of the services rendered if the commission finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand tons [272155.41 metric tons] during the twelve months immediately following the date the operator is issued a surface coal mining and reclamation permit.

Approved March 7, 1995

Filed March 7, 1995

## **CHAPTER 361**

### **SENATE BILL NO. 2108**

(Natural Resources Committee)

(At the request of the Public Service Commission)

## **ABANDONED MINE LANDS CONTRACT REQUIREMENTS**

AN ACT to create and enact a new subsection to section 38-14.2-03 of the North Dakota Century Code, relating to the powers and duties of the public service commission concerning abandoned mine reclamation projects.

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

**SECTION 1.** A new subsection to section 38-14.2-03 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Every successful bidder for an abandoned mine lands contract must be eligible based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to section 518 of the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of federal and state laws and rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

Approved March 7, 1995

Filed March 7, 1995

## CHAPTER 362

### HOUSE BILL NO. 1118

(Natural Resources Committee)

(At the request of the North Dakota Geological Survey)

## GEOTHERMAL SYSTEM INSTALLER REPORT REQUIREMENTS

AN ACT to amend and reenact subsection 3 of section 38-19-02 and section 38-19-04 of the North Dakota Century Code, relating to reporting requirements for installers of residential geothermal systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 38-19-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Geothermal energy extraction facility" means and includes any drilled, bored, or excavated device or installation to provide for the extraction of geothermal energy **but does not include any device used for private residential heating or cooling purposes.**

**SECTION 2. AMENDMENT.** Section 38-19-04 of the North Dakota Century Code is amended and reenacted as follows:

**38-19-04. Permit or report required.** It is unlawful to commence any operations for the drilling, boring, excavating, or construction of a geothermal energy extraction facility, which is used for other than private residential heating and cooling purposes, without first securing a permit from the state geologist, under such rules as may be adopted by the commission and after paying to the commission a fee for each such facility in an amount to be prescribed by the commission by rule. The fee set must be related to the cost of regulation and inspection under this chapter.

A report is required upon completion of any geothermal energy extraction facility used solely for private residential heating or cooling purposes. The report must be prepared by the geothermal energy extraction facility installer on a form provided by the state geologist and must be furnished to the state geologist within thirty days after the completion of the facility. The report must contain relevant information the state geologist requires relating to the environmental safety of the facility, including the facility owner and location, a log of formations penetrated, if any, system specifications and design, and fluids used in the facility.

All construction of geothermal energy extraction facilities must comply with rules adopted under this chapter.

Approved March 1, 1995

Filed March 1, 1995

# MOTOR VEHICLES

## CHAPTER 363

### SENATE BILL NO. 2508

(Senators St. Aubyn, DeMers, Mathern)

(Representatives Delmore, Oban, Price)

## MOBILITY-IMPAIRED PARKING

AN ACT to amend and reenact subsection 4 of section 39-01-15 of the North Dakota Century Code, relating to parking privileges for persons who are mobility impaired; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>189</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 39-01-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The director may issue, for a fee of three dollars per year or part of a year, a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written statement issued by a qualified physician or an advanced practice registered nurse to the director that the applicant is a mobility-impaired person within the criteria of subsection 2. The director shall waive the requirement for a written statement from a qualified physician or an advanced practice registered nurse if the applicant has previously submitted an application containing a certification from a qualified physician or an advanced practice registered nurse that the applicant's impairment is not reversible. The application must include the information required by the director. The physician's or advanced practice registered nurse's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the director. A physician or an advanced practice registered nurse who provides a false statement that a person is mobility impaired for the purpose of that person obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be nine and one-half inches [24.13 centimeters] in height and three inches [7.62 centimeters] in width and must bear, in white on blue, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid

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<sup>189</sup> Section 39-01-15 was also amended by section 1 of Senate Bill No. 2181, chapter 458.

for an initial period not to exceed three months, may be issued by the director for a fee of three dollars upon application supported by a physician's or an advanced practice registered nurse's statement. The director may issue a maximum of one additional temporary certificate, for a fee of three dollars. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's or an advanced practice registered nurse's statement that the extension is warranted. Temporary certificates must be the same size as other certificates issued under this section and must be white on red. The director may issue a maximum of one additional certificate, if the applicant does not have license plates issued under section 39-04-10.2, for a fee of six dollars per certificate, to a mobility-impaired person to whom a certificate has been issued under this subsection. The additional certificates may only be used by or on behalf of the mobility-impaired person.

Approved April 4, 1995

Filed April 4, 1995



## CHAPTER 364

## HOUSE BILL NO. 1093

(Representative Price)

(At the request of the Department of Transportation)

## MOTOR VEHICLE DEALER VIOLATION HEARINGS

AN ACT to amend and reenact section 39-01-16 of the North Dakota Century Code, relating to hearings on alleged violations by motor vehicle dealers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-01-16 of the North Dakota Century Code is amended and reenacted as follows:

**39-01-16. Hearing on alleged violations.** Any person having information that a licensed dealer has violated any provisions of this title may file with the ~~registrar~~ director an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the ~~registrar shall set the matter for hearing in Bismarck not less than ten days after copies of the affidavit and notice of hearing have been~~ director shall investigate the violation alleged in the affidavit. If, after investigation, the director determines that the dealer's license will be revoked or suspended, a notice of intent to revoke or suspend the license must be mailed to the dealer by registered mail. The notice must provide the dealer with an opportunity for a hearing prior to the effective date of the license revocation or suspension. A record of such hearings must be made by stenographic notes or use of an electronic recording device.

If after such hearing the ~~registrar~~ director finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the dealer's license for a period of time to be determined by the ~~registrar~~ director. Such action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is ineffective while the appeal is pending.

The ~~registrar~~ director has the power to appoint an administrative hearing officer to conduct the hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing officer shall submit the findings to the ~~registrar~~ director for consideration and final decision.

Any witness called by the prosecution, except a peace officer while on duty, shall receive the same fees and mileage as a witness in a civil case in district court.

Approved February 1, 1995

Filed February 1, 1995

## CHAPTER 365

### SENATE BILL NO. 2173

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

## HIGHWAY PATROLMEN'S RETIREMENT BENEFITS

AN ACT to create and enact a new section to chapter 39-03.1 of the North Dakota Century Code, relating to conversion of unused sick leave under the highway patrolmen's retirement system; and to amend and reenact subsection 2 of section 39-03.1-10.1, subdivision a of subsection 4 of section 39-03.1-11, subsection 6 of section 39-03.1-11, and subsection 8 of section 39-03.1-11 of the North Dakota Century Code, relating to purchase of service, retirement benefits, surviving spouse benefits, and surviving spouses of members under the highway patrolmen's retirement system.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-03.1-10.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon reemployment, elect to repurchase ~~months of service lost to the date of refund. The election to repurchase must be made within ninety days of reemployment and repayment must begin within twelve months of reemployment. The repayment may be made in a lump sum or by periodic payments that each year include at least ten percent of the repayment principal amount. The board shall establish an interest rate to be charged on periodic payments. If the contributor's death occurs before completion of the repurchase, the contributor's spouse may, within ninety days of the contributor's death, complete the repurchase. Benefits payable to the surviving spouse cannot be paid until the repurchase has been completed the forfeited past service for the retirement program and the retiree health benefits program in accordance with the rules adopted by the board.~~

**SECTION 2. AMENDMENT.** Subdivision a of subsection 4 of section 39-03.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Normal retirement benefits for all contributors reaching the normal retirement date are payable monthly, and are:
  - (1) The first twenty-five years of credited service multiplied by ~~two~~ three and ~~ninety-six~~ three hundredths percent of final average salary.
  - (2) All years in excess of twenty-five years of credited service multiplied by one and three-fourths percent of final average salary.

- (3) All contributors who retired before July 1, ~~1993~~ 1995, are entitled to receive benefits equal to ~~two three~~ and ~~ninety six~~ three hundredths percent of final average salary multiplied by the first twenty-five years of credited service, plus one and three-fourths percent of final average salary multiplied by credited service in excess of twenty-five years, with the increased benefits payable beginning July 1, ~~1993~~ 1995.

**SECTION 3. AMENDMENT.** Subsection 6 of section 39-03.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. If before retiring a contributor dies after completing ten years of eligible employment, the board shall pay the contributor's accumulated deductions to ~~any beneficiary designated by the contributor with the written consent of the contributor's surviving spouse; if any.~~ However, if there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing, the board shall pay the contributor's account balance to the contributor's beneficiary or, if there is no named beneficiary, to the contributor's estate. If the contributor has not designated ~~any~~ an alternate beneficiary under this section, the surviving spouse of the contributor may select one of the following optional forms of payment:
- a. A lump sum payment of the contributor's accumulated deductions as of the date of death.
  - b. Payments for sixty months as calculated for the deceased contributor as if the contributor ~~was~~ were age fifty-five at the date of death.
  - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased contributor's accrued normal retirement benefits until the spouse dies.

**SECTION 4.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Conversion of sick leave. At termination of eligible employment a member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the employer, if the member pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the employer and employee contribution, plus one percent for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of that person's certified sick leave. All conversion payments must be made within sixty days of termination and before the member receives a retirement annuity.

**SECTION 5. AMENDMENT.** Subsection 8 of section 39-03.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a contributor ~~who is~~ receiving retirement benefits, or a contributor's surviving spouse ~~who is~~ receiving retirement benefits, dies before the total amount of benefits paid to them equals the amount of the contributor's accumulated deductions at retirement, the difference must be paid to that spouse's estate, to the surviving beneficiary, or to the contributor's estate the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 366****SENATE BILL NO. 2128**

(Senator B. Stenehjem)

(At the request of the Department of Transportation)

**MOTOR VEHICLE STAGGERED REGISTRATION**

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to a staggered registration system for certain vehicles; and to amend and reenact section 39-04-06 of the North Dakota Century Code, relating to checks for registration fees returned to the department of transportation.

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

**SECTION 1. AMENDMENT.** Section 39-04-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-04-06. When registration rescinded or suspended.** The department shall rescind or suspend the registration of a vehicle for any of the following:

1. When the department determines a vehicle is unsafe or unfit to be operated or is not equipped as required by law.
2. When the person to whom the registration card or registration number plates have been issued makes or permits any unlawful use of the same or permits the use thereof by a person or on a vehicle not entitled thereto.
3. When the department finds that a vehicle is registered in accordance with a reciprocity agreement, arrangement, or declaration and the vehicle is operated in violation of the agreement.
4. When the department determines that a motor vehicle is not covered by security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance as required by chapter 26.1-41.
5. When the department is satisfied that the registration or registration card, plate, or permit was fraudulently or erroneously issued.
6. When a registered vehicle has been dismantled or wrecked.
7. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.
8. When the department determines that the owner has committed any offense under this chapter involving the registration or the registration card, plate, or permit to be suspended or rescinded.
9. When the purchaser or transferee of a vehicle fails to present the endorsed and assigned certificate of title to the department for transfer and make application for a new certificate of title within thirty days as required by section 39-05-17.

10. When the department determines a vehicle is operating in violation of the provisions of the international fuel tax agreement.

Any registration suspended for any of the above reasons must be restored upon compliance with the laws governing vehicle registration.

Whenever a check is returned to the department for want of payment the department shall rescind the registration of the vehicle covered by the check.

Any registration rescinded for want of payment of a check must be restored upon payment of the registration fee and a reasonable cost not to exceed twenty dollars for the collection of the check. If a returned check has a value exceeding one thousand dollars, the department shall also collect an additional fee of one percent of the value of the check.

SECTION 2. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

Staggered registration for apportioned vehicles. The director may establish a procedure for the implementation of a staggered registration system for vehicles registered pursuant to the international registration plan. Procedures established under this section may provide for a one-time collection of up to eighteen months of registration fees.

Approved March 10, 1995

Filed March 10, 1995

## CHAPTER 367

## HOUSE BILL NO. 1064

(Representatives Wald, Bernstein)  
(Senators Kinnoin, Solberg, Tennefos)

## PLATES RETAINED UPON VEHICLE TRANSFER

AN ACT to amend and reenact sections 39-04-10.3, 39-04-36, 39-04-39.2, and 39-04-44 of the North Dakota Century Code, relating to the retention of number plates by an owner when a vehicle is transferred or assigned; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 39-04-10.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.3. Personalized plates.** The department may, in its discretion, provide special license plates marked with not more than seven numerals, letters, or ampersands, or combinations of numerals, letters, and ampersands, at the request of the registrant, upon application therefor and payment of an additional fee of twenty-five dollars per registration period. The department shall make the special license plates authorized by this section available for motor vehicles registered under section 39-04-10.6, trailers, travel trailers, and motorcycles. The fee for the special license plates issued under this section for vehicles registered under section 39-04-10.6 is a one-time fee of one hundred dollars. The special license plates for motorcycles may contain not more than six numerals, letters, or ampersands, or a combination of not more than six numerals, letters, and ampersands. In the event of sale or transfer of the vehicle, the owner must remove the special license plates ~~may remain with the vehicle or they may be surrendered and, upon application, regular license plates must be issued without additional cost, or upon in accordance with section 39-04-36. Upon payment of the applicable registration transfer fee, the special license plates must~~ may be transferred to the a replacement motor vehicle.

SECTION 2. AMENDMENT. Section 39-04-36 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-04-36. Transfer of registration and registered vehicle - Removal of number plates upon transferring or assigning title - Exception - Transfer of number plates.**

1. Whenever the owner ownership of a vehicle registered under the provisions of this chapter ~~transfers or assigns his title thereto or interest therein or chapter 39-18 is transferred or assigned~~, the registration of the vehicle, together with the number plates originally assigned thereto, must be transferred to the transferee as provided in this chapter. The number plates originally assigned to the vehicle must remain attached thereto until the end of the current registration year except as provided in this chapter or as provided by section 39-26-05 and subsection 1 of section 39-26-08 expires and the transferor shall remove the number plates.
2. A registration plate currently assigned to a vehicle may be transferred to a similar replacement vehicle at the owner's request; upon payment of the appropriate registration fees applicable to the replacement vehicle

and a five dollar transfer fee. A new registration plate must be assigned to the vehicle being replaced. Upon applying for the transfer of the registration and paying a five dollar fee, a person who transfers or assigns to another person the ownership of a registered vehicle may receive credit for the unused portion of the fees paid for the transferred vehicle. One-twelfth of the annual fee must be credited for each month of the registration period remaining after the month in which the transfer is made. The credit may not extend beyond the original expiration of the registration. Except as provided in section 39-04-44, the credit must be applied to the registration fees for a replacement vehicle. The transferor shall apply for the transfer of registration within thirty days of the purchase of the replacement vehicle.

3. The owner of a vehicle registered for a gross weight in excess of thirty-six thousand pounds [16,329.33 kilograms] may transfer registration and number plates from one truck to a replacement truck by compliance with procedures established by the department. The truck from which the registration and number plates are transferred may not be operated upon the highways of this state until properly licensed therefor under the provisions of this chapter. Except as otherwise permitted in this chapter, before the transferee of a registered vehicle may operate the vehicle on a highway, the transferee must apply for and obtain a new registration of the vehicle, as on an original registration. To provide the transferee adequate time to obtain a new registration, the director may provide for the issuance of a temporary registration certificate to permit the transferee to operate the vehicle for thirty days after the date of acquisition. The certificate must be available to the transferee from licensed vehicle dealers, law enforcement agencies, and motor vehicle branch offices. The vehicle may be operated for five days from date of purchase without a plate or certificate of ownership if dated evidence of ownership is carried in the vehicle. The evidence of ownership must be in a form as prescribed by the department.

**SECTION 3. AMENDMENT.** Section 39-04-39.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-39.2. Refunds of registration fees.** No refunds of registration fees may be made, except ~~where~~ when the vehicle has been improperly registered or ~~where~~ when the vehicle has been destroyed.

**SECTION 4. AMENDMENT.** Section 39-04-44 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-44. Credits on destroyed vehicle.** Any owner of a motor vehicle licensed in this state, if such vehicle is permanently and involuntarily destroyed, may during the same year or following year claim a refund in an amount equal to the unused portion of the fee paid, less five dollars, upon the vehicle so destroyed, computed pro rata by the month, one-twelfth of the annual fee paid for each month of the year remaining after the month in which such vehicle was so destroyed, provided the number plates, registration card, and certificate of title are returned to the department. If the number plates or registration card assigned to the vehicle are destroyed, a refund may be obtained upon furnishing information of such fact satisfactory to the department. Upon receiving the certificate of title, the department shall issue a salvage certificate of title.



**SECTION 5. EFFECTIVE DATE.** This Act is effective December 1, 1997.

Approved April 7, 1995

Filed April 7, 1995

## CHAPTER 368

## HOUSE BILL NO. 1239

(Representative Timm)

## TRAILER NUMBER PLATE REPLACEMENT

AN ACT to amend and reenact subsection 2 of section 39-04-12 of the North Dakota Century Code, relating to trailer number plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-04-12 of the North Dakota Century Code is amended and reenacted as follows:

2. The department ~~may~~, in its discretion, may provide to an owner of a ~~fleet of ten or more trailers which are~~ trailer that is operated, offered for lease ~~and, or~~ rented to the public, number plates ~~which that~~ are for a period of not more than six consecutive years and which are exempt from the requirements of annual validation evidence. The registration fees for ~~such trailers~~ the trailer may be paid for the entire period for which the plates are issued, or the ~~fees~~ fee may be paid for the first year of the issue and a corporate surety bond may be filed in ~~such~~ the sum ~~as~~ the department ~~deems~~ determines reasonable and adequate in the circumstances, conditioned that the owner will pay the annual fee at the beginning of each annual registration period. The department shall transfer to a replacement trailer number plates issued pursuant to this subsection along with any unused registration fees. If the owner has disposed of the trailer and is not replacing the trailer, upon surrender of the number plates the department shall issue a refund of the registration fees paid for any unused registration year.

Approved March 21, 1995

Filed March 23, 1995

## CHAPTER 369

### SENATE BILL NO. 2286

(Senator Mutch)  
(Representative Belter)

## MOTOR VEHICLE FLEET REGISTRATION WITHDRAWAL

AN ACT to amend and reenact section 39-04-44 of the North Dakota Century Code, relating to credits on the registration of motor vehicles withdrawn from fleet registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-44 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-44. Credits on destroyed or withdrawn vehicle.**

1. Any owner of a motor vehicle licensed in this state, if such vehicle is permanently and involuntarily destroyed, may during the same year or following year claim a refund in an amount equal to the unused portion of the fee paid upon the vehicle so destroyed, computed pro rata by the month, one-twelfth of the annual fee paid for each month of the year remaining after the month in which such vehicle was so destroyed, provided the number plates, registration card, and certificate of title are returned to the department. If the number plates or registration card assigned to the vehicle are destroyed, a refund may be obtained upon furnishing information of such fact satisfactory to the department. Upon receiving the certificate of title, the department shall issue a salvage certificate of title.
2. If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the registrant of the fleet shall notify the department. The department may require surrender of cab cards and other identification devices with respect to the vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the fleet operator, the unused portion of the fees paid with respect to the vehicle must be applied against liability of the fleet operator for subsequent additions to the fleet during the registration year or for additional fees upon audit. If at the end of the registration year there remains an unused portion of fees paid with respect to the permanently withdrawn vehicles, the unused fees must be applied against registration fees for the registration year immediately following the year during which the vehicles were permanently withdrawn. The used portion of fees of a vehicle permanently withdrawn from a fleet is a sum equal to the amount paid with respect to the vehicle when it was first proportionally registered in the registration year, reduced by one-twelfth of the total annual proportional registration fee applicable to the vehicle for each calendar month of the registration year including the month the notice of withdrawal is received by the department, except that no unused portion of fees of less than five dollars may be considered or

applied. If an unused portion of fees cannot be applied against registration fees for the registration year immediately following, an application for refund of the unused portion may be made to the department, which shall adopt rules as may be required for payment of the refund.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 370****HOUSE BILL NO. 1232**

(Representatives Keiser, Gorman)

**NONDRIVER IDENTIFICATION CARDS FOR  
CHILDREN**

AN ACT to amend and reenact subsection 1 of section 39-06-03.1 of the North Dakota Century Code, relating to nondriver photo identification cards.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident, of the age of twelve years or over, ~~fulfilling~~ who fulfills the requirements of this section. The director may issue upon request a nondriver color photo identification card to any North Dakota resident under twelve years of age who fulfills the requirements of this section, except that the form of verification of the name and the date of birth is in the director's discretion, as is the manner in which the records are kept. A nondriver color photo identification card issued to a resident under twelve years of age expires on the twelfth birthday of that resident. If the person is under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license of an operator under the age of twenty-one years.

Approved March 14, 1995

Filed March 14, 1995

**CHAPTER 371****HOUSE BILL NO. 1237**

(Representatives Drovdal, Kempenich, Kerzman)  
(Senators Bowman, O'Connell)

**DRIVER'S LICENSE EXAMINATIONS**

AN ACT to amend and reenact section 39-06-13 of the North Dakota Century Code, relating to examination of operator's license applicants.

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

**SECTION 1. AMENDMENT.** Section 39-06-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-06-13. Examination of applicants.** The commissioner shall examine every applicant for an operator's license, except as otherwise provided in this chapter. ~~Such~~ The examination must include a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning, and directing traffic, and knowledge of the traffic laws of this state. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle is also required, but may be waived for ~~those applicants~~ an applicant who ~~have~~ has successfully passed such a test in ~~some other~~ this or another state. Operators' examinations must be given at locations designated by the commissioner. The commissioner may require such other physical or mental examination as may be deemed advisable.

Approved March 10, 1995  
Filed March 10, 1995

## CHAPTER 372

## HOUSE BILL NO. 1092

(Representative Belter)

(At the request of the Department of Transportation)

## DEPARTMENT OF TRANSPORTATION PROCEDURES

AN ACT to amend and reenact subsection 1 of section 39-06-14, section 39-06-27, subsection 4 of section 39-06-32, subsection 2 of section 39-06-33, sections 39-06.1-14, 39-16-03, 39-16-03.1, subsection 1 of section 39-16-05, section 39-16.1-07, subsection 1 of section 39-16.1-19, and subsection 2 of section 39-20-04 of the North Dakota Century Code, relating to photographs on motor vehicle operator's licenses, proof of driving offenses in other jurisdictions, refusal to submit to an implied consent chemical test in another state, rules for hearings on suspension or revocation, delivery of suspension orders, fees for copies of operating records, entries on driver record abstracts, time for filing proof of financial responsibility before suspension, proof of financial responsibility, and curing a refusal to take a chemical test.

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

<sup>190</sup> SECTION 1. AMENDMENT. Subsection 1 of section 39-06-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The ~~commissioner shall~~ director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the ~~commissioner~~ director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. If the licensee is under the age of twenty-one, the photograph must be against a color background that is different from the color used for other licensees. If requested on the license application, the license issued by the ~~commissioner~~ director must include a statement making an anatomical gift under chapter 23-06.2. No license is valid until it has been signed by the licensee with the licensee's usual signature. The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter 23-06.2. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The ~~commissioner~~ director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be

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<sup>190</sup> Section 39-06-14 was also amended by section 1 of Senate Bill No. 2481, chapter 373, and section 1 of Senate Bill No. 2484, chapter 374.

produced by digital imaging or other electronic means and is not a public record.

**SECTION 2. AMENDMENT.** Section 39-06-27 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-27. Suspending licenses upon conviction, suspension, or revocation in another state.** The ~~commissioner~~ director may suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator. This section may not be construed as authorizing the assessment of points against a resident driver's record in accordance with chapter 39-06.1, except upon conviction of a resident driver for a criminal offense in another state which is equivalent to one of those offenses defined in section 39-06.1-05. No suspension or revocation may be imposed for convictions for driving under suspension or revocation in another state if a valid North Dakota license or permit was in effect at the time of the violation. For the purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the drivers licensing authority of the other ~~state~~ jurisdiction are sufficient evidence whether or not they are certified copies.

Upon receipt of a certification that the operating privileges of a resident of this state have been suspended or revoked in any other state pursuant to a law providing for the suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the ~~commissioner~~ director to suspend a nonresident's operating privileges had the accident occurred in this state, the ~~commissioner~~ director shall suspend the license of such resident if he was the driver of a motor vehicle involved in such accident. Such suspension continues until such resident furnishes evidence satisfactory to the ~~commissioner~~ director of his compliance with the laws of such other state relating to the deposit of security or payment of a judgment arising out of a motor vehicle accident, to the extent that such compliance would be required if the accident had occurred in this state.

**SECTION 3. AMENDMENT.** Subsection 4 of section 39-06-32 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Refusal to submit to an implied consent chemical ~~alcohol~~ test in another state. For purposes of this subsection the specific requirements for establishing a refusal used in the other state may not be considered, and photostatic copies of the records of the other ~~state's~~ jurisdiction's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-06.2-10.

**SECTION 4. AMENDMENT.** Subsection 2 of section 39-06-33 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Any hearing conducted under this section and any appeal from the decision of the hearing must be conducted under ~~rules adopted by the~~



~~director~~ chapter 28-32, except the hearing must be heard within sixty days of the receipt of the request for hearing and in the county of the licensee's residence, unless the parties agree to a different time and place for the hearing. At the hearing, the regularly kept records of the director may be introduced and are prima facie evidence of their content without further foundation.

**SECTION 5. AMENDMENT.** Section 39-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-14. Failure to surrender license.** The ~~commissioner~~ director shall extend the period of suspension or revocation in all cases that involve a time period, within this title, when the person whose license or permit has been suspended or revoked fails to surrender such license or permit within forty-eight hours after ~~constructive~~ delivery of the order of suspension or revocation. Such period of suspension or revocation must be extended by one day for each day such person fails to surrender such license. Delivery of the order must be deemed to have occurred seventy-two hours after the order is mailed by regular mail to the address of record in the department under section 39-06-20.

**SECTION 6. AMENDMENT.** Section 39-16-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-16-03. Abstract - Not admissible in evidence - Fee.** The ~~commissioner~~ director upon request shall furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter which must include the convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of a person's driving privileges. Any person, except law enforcement or judicial officers functioning in their official capacity, requesting the abstract shall indicate in writing the reason for the request and shall identify the person or firm for whom or which the request is made and the intended recipient of the abstract.

Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident.

A fee of three dollars must be paid for each abstract of any operating record, complete operating record, or record of clearance, except no fee will be assessed to law enforcement agencies. The ~~commissioner~~ director shall send an additional copy of the abstract to the driver whose abstract was requested, accompanied by a statement identifying the person making the request, identifying the person or firm for whom or which the request is made, identifying the intended recipient of the abstract, and providing the reason for the request. No abstract or statement may be sent to a driver where the request for the driver's abstract was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency of this state, or of its political subdivisions.

**SECTION 7. AMENDMENT.** Section 39-16-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-16-03.1. Entries on driver record abstract more than three years old confidential.** Notwithstanding any other provisions of this chapter, no entry more than three years old or an entry concerning a suspension under subsection 4, 5, 6, or 7 of section 39-06-03, or subsection 2, 5, or 6 of section 39-06-32, after the suspension ceases, on a driver record or abstract shall be available to the public,

except for statistical purposes, other than by order of a court of competent jurisdiction. The order must be accompanied by a fee of twenty-five dollars.

**SECTION 8. AMENDMENT.** Subsection 1 of section 39-16-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~commissioner~~ director, within ~~sixty~~ ninety days after the receipt of a report of a motor vehicle accident within this state for which a driver is required to file a report under section 39-08-09, shall suspend the license or nonresident operating privilege of each driver of each vehicle in any manner involved in the accident unless the driver deposits security as provided in sections 39-16-09 and 39-16-10 in a sum which is sufficient in the judgment of the ~~commissioner~~ director to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against such driver. Notice of suspension and opportunity for hearing must be sent by the ~~commissioner~~ director to the driver not less than ten days prior to the effective date of the suspension and must state the amount required as security. However, if a driver, either resident or nonresident, involved in the accident purchases an insurance policy with at least the amount of coverage required by this section, and files proof and satisfies financial responsibility requirements thereof with the ~~commissioner~~ director, that driver may retain the license or privilege until the driver has accepted responsibility for the accident or agreed to a settlement of claims arising from the accident or until a court of this state has determined that the driver was negligent or responsible for the accident in whole or in part. If the driver is found negligent or responsible for the accident, in whole or in part, the license or privilege must be suspended and will not be returned until the driver complies with this chapter.

**SECTION 9. AMENDMENT.** Section 39-16.1-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-16.1-07. Revocation or suspension of license for reasons other than provisions of this chapter.**

1. Whenever the director under any other law of this state, except sections 39-06-40 and 39-06-40.1, revokes the license of any person, the license must remain revoked and may not be renewed nor shall any license be issued to such person, unless the person gives and maintains proof of financial responsibility.
2. If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of license, driving or being in actual physical control of a vehicle while under the influence in violation of section 39-08-01 or equivalent ordinance, or operating a motor vehicle upon the highway while the person's license or privilege to drive is under suspension for a violation requiring a license or privilege to drive suspension of at least ninety-one days or revocation, the license or driving privilege must remain suspended or revoked and no license may be issued or returned to the person, unless the person gives and maintains proof of financial responsibility.
3. ~~Whenever the director revokes or suspends a nonresident's operating privilege by reason of an administrative sanction under chapter 39-20, a~~

~~conviction, or forfeiture of bail, the privilege remains revoked or suspended unless the person gives and maintains proof of financial responsibility.~~

**SECTION 10. AMENDMENT.** Subsection 1 of section 39-16.1-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The ~~commissioner~~ director shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the ~~commissioner~~ director shall direct and the Bank of North Dakota shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the ~~commissioner~~ director shall waive the requirement of filing proof, in any of the following events:
  - a. At any time after ~~three years~~ one year from the date such proof was required when, during the ~~three year~~ one-year period preceding the request, the ~~commissioner~~ director has not received record of a conviction or a forfeiture of bail which would require the revocation of the license or operating privilege, or both, of the person by or for whom such proof was furnished.
  - b. The death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle.
  - c. The surrender of his license to the ~~commissioner~~ director by the person who has given proof.

**SECTION 11. AMENDMENT.** Subsection 2 of section 39-20-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A person's driving privileges are not subject to revocation under this section if all of the following criteria are met:
  - a. No administrative hearing ~~request~~ is ~~made~~ held under section 39-20-05;
  - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
    - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
    - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
    - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within

twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn.

- c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
- d. The court accepts the person's guilty plea and a notice of that fact is mailed to the ~~commissioner~~ director within twenty-five days after the temporary operator's permit is issued; and
- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the ~~commissioner~~ director prior to the return or reinstatement of the person's driving privileges.

Approved March 14, 1995  
Filed March 14, 1995

## CHAPTER 373

## SENATE BILL NO. 2481

(Senator G. Nelson)  
(Representative Belter)

## FARM EXEMPTION FOR OPERATOR'S LICENSE

AN ACT to amend and reenact paragraph 3 of subdivision b of subsection 2 of section 39-06-14 of the North Dakota Century Code, relating to the farm exemption for holders of a class D motor vehicle operator's license.

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

<sup>191</sup> SECTION 1. AMENDMENT. Paragraph 3 of subdivision b of subsection 2 of section 39-06-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (3) Farm exemption. The holder of a class D license may operate any two-axle or tandem-axle motor vehicle, a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds [2721.55 kilograms], and a truck or truck tractor towing a trailer, semitrailer, or farm trailer ~~when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed twenty four thousand pounds [10886.22 kilograms]~~ exempted under subsection 3 of section 39-06.2-06, except:
- (a) A double trailer, triple trailer, or if under eighteen years of age, a truck tractor as defined in subsection 85 of section 39-01-01.
- (b) A bus designed to carry sixteen or more passengers, including the driver.

Approved March 17, 1995

Filed March 20, 1995

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<sup>191</sup> Section 39-06-14 was also amended by section 1 of House Bill No. 1092, chapter 372, and section 1 of Senate Bill No. 2484, chapter 374.

## CHAPTER 374

## SENATE BILL NO. 2484

(Senators O'Connell, Goetz, Solberg)  
(Representatives Belter, Johnson, Nicholas)

## CUSTOM HARVESTER OPERATOR'S LICENSES

AN ACT to amend and reenact subsection 3 of section 39-06-14 of the North Dakota Century Code, relating to custom harvester operator's licenses for persons over sixteen years of age; and to declare an emergency.

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

<sup>192</sup> SECTION 1. AMENDMENT. Subsection 3 of section 39-06-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Any holder of a classified license who drives a motor vehicle otherwise than as permitted by the class of license issued to ~~him~~ must be the holder is deemed to be driving a motor vehicle without being duly licensed ~~by~~ under this chapter. The holder of a classified license who desires to obtain a different class license in one of the classes provided by this chapter must exchange or renew ~~such~~ the license. The commissioner may ~~impose such~~ adopt rules ~~and regulations as he may deem the commissioner determines are~~ necessary with respect to such renewals or exchanges for the proper administration of this chapter. No class A, B, or C license may be issued to any person under eighteen years of age, except a class A, B, or C type license specially restricted to use for custom harvest purposes must be issued to a person at least sixteen years of age who satisfactorily completes the appropriate examinations.

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

Approved March 17, 1995  
Filed March 20, 1995

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<sup>192</sup> Section 39-06-14 was also amended by section 1 of House Bill No. 1092, chapter 372, and section 1 of Senate Bill No. 2481, chapter 373.

## CHAPTER 375

## SENATE BILL NO. 2048

(Legislative Council)

(Interim Court Services Committee)

(Senators W. Stenehjem, Andrist)

(Representatives Mahoney, Soukup, Kretschmar)

## NONCRIMINAL TRAFFIC VIOLATION APPEALS

AN ACT to amend and reenact section 39-06.1-03 of the North Dakota Century Code, relating to appeals of noncriminal traffic violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>193</sup> SECTION 1. AMENDMENT. Section 39-06.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-03. Administrative hearing - Procedures - Appeals - Stay orders.**

1. If a person cited for a traffic violation, other than an offense listed in section 39-06.1-05, does not choose to follow one of the procedures set forth in section 39-06.1-02, ~~he~~ the person may request a hearing on the issue of ~~his~~ commission of the violation charged; ~~the~~ The hearing to must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance.
2. At the time of a request for a hearing on the issue of commission of the violation, the person charged shall deposit with the official having jurisdiction an appearance bond equal to the statutory fee for the violation charged.
3. If a person cited for a traffic violation, other than an offense listed in section 39-06.1-05, ~~who~~ has requested a hearing on the issue of the commission of the violation charged; and appears at the time scheduled for the hearing, and the state or city, as the case may be, does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.
4. If the official finds that the person had committed the traffic violation, ~~he~~ the official shall notify the licensing authority of that fact, and whether the person was driving more than nine miles [14.48 kilometers] per hour in excess of the lawful limit, stating specifically the miles [kilometers] per hour in excess of the lawful limit, if charged with a speeding violation, within ten days of the date of the hearing. The fact that a person has admitted a violation, or has, in any proceeding, been found to have committed a violation, may not be referred to in any way, nor be admissible as evidence in any court, civil, equity, or criminal, except in

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<sup>193</sup> Section 39-06.1-03 was also amended by section 3 of Senate Bill No. 2116, chapter 318.

an action or proceeding involving that person's driving license or privilege.

5. a. If a person is aggrieved by a finding that the person committed the violation, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there may be no further appeal. Notice of appeal under this subsection must be given within thirty days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.
- b. The appellate court upon application by the appellant may:
  - (1) Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty days;
  - (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty days; or
  - (3) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of two dollars. Any order granting a stay or a temporary certificate must be forwarded forthwith by the clerk of court to the licensing authority, which shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars.

- c. If the person charged is found not to have committed the violation by the appellate court, the clerk of court shall report that fact to the licensing authority immediately. If an appeal under this subsection is from a violation of a city ordinance, the city attorney for the city wherein the alleged violation occurred shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.
6. The state or the city, as the case may be, must prove the commission of a charged violation at the hearing or appeal under this section by a fair preponderance of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota



Rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.

7. As used in sections 39-06.1-02, 39-06.1-03, and 39-06.1-04, the word "official" means a ~~district judge~~, a municipal judge, or; ~~when provided by statute~~, a magistrate or other qualified person appointed by a ~~district~~ the presiding judge of the judicial district, to serve as such official for all or a specified part of a ~~the~~ judicial district.

Approved March 1, 1995

Filed March 1, 1995

**CHAPTER 376****SENATE BILL NO. 2262**

(Senators Christmann, Kelsh)

(Representative Boehm)

**SCHOOLBUS OVERTAKING AND PASSING PENALTY**

AN ACT to amend and reenact subsection 2 of section 39-06.1-06 and section 39-10-46.1 of the North Dakota Century Code, relating to the statutory fees for overtaking and passing a schoolbus; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of the 1994 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
  - a. A violation of section 39-10-41 ~~or~~, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
  - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.

**SECTION 2. AMENDMENT.** Section 39-10-46.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-46.1. Permitting use of vehicle to violate section 39-10-46 prohibited -**  
**Penalty - Presumption of permission - Defense - Dual prosecution prohibited.** The registered owner of a motor vehicle may not permit that motor vehicle to be operated in violation of section 39-10-46. ~~A person violating this provision is subject to a civil penalty of twenty dollars.~~ If a motor vehicle is seen violating section 39-10-46, it is a disputable presumption that the registered owner of the motor vehicle permitted that violation. It is a defense to a charge of violating this section that the registered owner of the vehicle was not operating the vehicle, if that registered owner identifies the person authorized by that owner to operate the motor vehicle at the time of the violation of section 39-10-46, or if that motor vehicle had been taken without the registered owner's permission. A person may not be charged both with violating this section and with violating section 39-10-46. Violation of this section is not a lesser included offense of violation of section 39-10-46.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 377****HOUSE BILL NO. 1492**

(Representatives Boehm, Carlisle, Rydell)  
(Senator Christmann)

**DRIVING WITHOUT LIABILITY INSURANCE PENALTY**

AN ACT to create and enact a new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to the penalty for driving without liability insurance; and to amend and reenact section 39-08-20 of the North Dakota Century Code, relating to driving without liability insurance.

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

**SECTION 1.** A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Except as provided in  
paragraph 9 of this  
subdivision, operating a  
motor vehicle without  
liability insurance, in  
violation of section 39-08-20,  
if the driving record shows  
that the licensee has within  
the eighteen months preceding  
the violation previously  
violated section 39-08-20

12 points

**SECTION 2. AMENDMENT.** Section 39-08-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-08-20. Driving without liability insurance prohibited - Penalty.** A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law or during the investigation of an accident, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this section if that person fails to submit such evidence to the officer or the officer's agency within twenty days of the date of the request. If that person produces a valid policy of liability insurance in effect at the time of violation of this section to the officer, officer's agency, or a court, that person may not be convicted or assessed any court costs for violation of this section. Violation of this section is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars

which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within an eighteen-month period must be fined at least three hundred dollars which may not be suspended.

Approved April 7, 1995

Filed April 7, 1995

**CHAPTER 378****SENATE BILL NO. 2331**

(Senators Lindaas, Grindberg, Watne)  
(Representatives Gulleason, Monson, Rydell)

**DRIVING UNDER THE INFLUENCE WITH MINOR**

AN ACT to create and enact a new section to chapter 39-08 of the North Dakota Century Code, relating to the penalty for driving while under the influence of alcohol while being accompanied by a minor.

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

**SECTION 1.** A new section to chapter 39-08 of the North Dakota Century Code is created and enacted as follows:

**Driving while under the influence of alcohol while being accompanied by a minor - Penalty.** It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was accompanying the individual in a motor vehicle.

Approved March 10, 1995

Filed March 13, 1995

## CHAPTER 379

## SENATE BILL NO. 2247

(Senators Goetz, Kinnoin)

(Representative Wald)

DRIVER'S DUTY IN ACCIDENT INVOLVING DEATH  
OR INJURY

AN ACT to amend and reenact section 39-08-04 of the North Dakota Century Code, relating to the duty of a driver involved in a vehicle accident involving death or personal injury; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 39-08-04 of the North Dakota Century Code is amended and reenacted as follows:

## 39-08-04. Accidents involving death or personal injuries - Penalty.

1. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop ~~such~~ at as close as possible to the scene of such the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until ~~he~~ that driver has fulfilled the requirements of section 39-08-06. Every ~~such~~ stop required by this section must be made without obstructing traffic more than is necessary.
2. Any person failing ~~to stop or~~ to comply with said the requirements of this section under ~~such~~ circumstances involving personal injury is guilty of a class A misdemeanor. Any person negligently failing to comply with the requirements of this section under circumstances involving serious personal injury or death is guilty of a class C felony.
3. The commissioner shall revoke the license or permit to drive or nonresident operating privilege of a person convicted under this section.

Approved April 12, 1995

Filed April 13, 1995

**CHAPTER 380****HOUSE BILL NO. 1368**

(Representative Belter)  
(Senator B. Stenehjem)

**SPEEDING FEES IN CONSTRUCTION ZONES**

AN ACT to amend and reenact subsection 2 of section 39-09-02 of the North Dakota Century Code, relating to speed limitations.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-09-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The ~~commissioner~~ director may designate and post special areas of state highways where lower speed limits apply. If there is a violation of a highway construction zone speed limit, where within that zone individuals engaged in construction were present at the time of the violation, then the fees required for a noncriminal disposition are forty dollars for one through ten miles per hour over the posted speed; and forty dollars, plus one dollar for each additional mile per hour over ten miles per hour over the limit. However, if a greater fee would be applicable under section 39-06.1-06, then that fee is required for the noncriminal disposition. The highway construction zone speed limit posted sign must state "Minimum Fee \$40".

Approved March 27, 1995  
Filed March 28, 1995

**CHAPTER 381****SENATE BILL NO. 2244**

(Senators B. Stenehjem, Kinnoin, O'Connell)  
(Representatives Belter, Grosz, Skarphol)

**INTERSECTION RIGHT-OF-WAY RULES**

AN ACT to amend and reenact subsection 1 of section 39-10-22 of the North Dakota Century Code, relating to intersection right-of-way rules.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-10-22 of the North Dakota Century Code is amended and reenacted as follows:

1. When two vehicles approach or enter an intersection not controlled by an official traffic-control device from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. If the intersection is T-shaped and not controlled by an official traffic-control device, the driver of the vehicle on the terminating street or highway shall yield to the vehicle on the continuing street or highway.

Approved March 10, 1995

Filed March 13, 1995



## CHAPTER 382

### SENATE BILL NO. 2284

(Senators Mutch, Schobinger)  
(Representative Belter)

## MOTOR VEHICLE LENGTH AND WIDTH LIMITATION EXCEPTIONS

AN ACT to amend and reenact section 39-12-04 of the North Dakota Century Code, relating to exceptions to vehicle length and width limitations for safety appurtenances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-12-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-12-04. Width, height, and length limitations on vehicles - Exceptions.** Vehicles operated on a highway in this state may not exceed the following width, height, or length limitations:

1. A total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
  - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
  - b. Implements of husbandry being moved by resident farmers, ranchers, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.
  - c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
  - d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, overwidth self-propelled fertilizer spreaders, and overwidth hay grinders, which may be operated on the highway after obtaining a permit issued by the highway patrol. The highway patrol shall issue permits that are valid during daylight hours on any day of the week to any commercial mover otherwise qualified under this subdivision. The permit is in lieu of registration requirements for the permit period. No permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This permit,

however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.

- e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
  - f. Any nonload carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement of trailer width. The width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners.
  - g. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.
2. a. A height of fourteen feet [4.27 meters], whether loaded or unloaded. This height limitation does not affect any present structure such as bridges and underpasses that are not fourteen feet [4.27 meters] in height.
- b. The limitation in subdivision a does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when all of the following apply:
- (1) The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, dealer, or manufacturer.
  - (2) The trip is at most sixty miles [96.56 kilometers].
  - (3) The trip is between sunrise and sunset.
  - (4) None of the trip is on an interstate highway.
3. A length limitation as follows:
- a. A single unit vehicle with two or more axles including the load thereon may not exceed a length of fifty feet [15.24 meters].
  - b. A combination of two units including the load thereon may not exceed a length of seventy-five feet [22.86 meters].
  - c. A combination of three or four units including the load thereon may not exceed a length of seventy-five feet [22.86 meters], subject to any rules adopted by the director that are consistent with public highway safety. The rules do not apply to a three-unit combination consisting of a truck tractor and semitrailer drawing a trailer or semitrailer.
  - d. A combination of two, three, or four units including the load thereon may be operated on all four-lane divided highways and those highways in the state designated by the director and local authorities as to the highways under their respective jurisdictions and may not exceed a length of one hundred ten feet [33.53 meters],

subject to any rules adopted by the director that are consistent with public highway safety.

e. Length limitations do not apply to:

- (1) Building moving equipment.
- (2) Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.
- (3) Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.
- (4) Structural material of telephone, power, and telegraph companies.
- (5) Truck-mounted haystack moving equipment, provided such equipment does not exceed a length of fifty-six feet [17.07 meters].
- (6) A truck tractor and semitrailer or truck tractor, semitrailer and the trailer when operated on the interstate highway system or parts of the federal aid primary system as designated by the director, only when federal law requires the exemption.
- (7) Safety and energy conservation devices and any additional length exclusive devices as determined by the highway patrol for the safe and efficient operation of commercial motor vehicles. Length exclusive devices are appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer.

- f. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.15 meters] except that trailers and semitrailers titled and registered in North Dakota prior to July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].

**4 to 7: Repealed by S.L. 1975, ch. 322, § 2.**

Approved March 10, 1995  
Filed March 13, 1995

## CHAPTER 383

### SENATE BILL NO. 2265

(Senators St. Aubyn, Lee, Watne)  
(Representatives Berg, Delmore, Nottestad)

## SALE OF USED MOBILE HOMES

AN ACT to amend and reenact sections 39-18-07 and 39-18-08 of the North Dakota Century Code, relating to the sale by real estate brokers or salespeople of used mobile homes and to penalties; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-18-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-18-07. Penalty.** Any person ~~who violates the provisions~~ violating a provision of this chapter for which a penalty is not specifically provided is guilty of a class B misdemeanor.

**SECTION 2. AMENDMENT.** Section 39-18-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-18-08. Sales by real estate broker or ~~salesman~~ salesperson of used mobile home.** Notwithstanding any other provision of law, a person licensed as a real estate broker or ~~salesman~~ salesperson may sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any used mobile home. For the purposes of this section, a used mobile home is a mobile home which has been previously sold by a mobile home dealer. Any person, including a person licensed as a real estate broker or ~~salesman~~ salesperson, who obtains a listing for the sale or exchange of a used mobile home which is located in a mobile home park, as defined in section 23-10-01, shall provide notice of such listing within seven days after the listing is obtained, in writing, to the owner or operator of the mobile home park ~~and to the lender if there is a lien attached to the used mobile home by a security agreement or other document evidencing the lien.~~

No real estate broker who engages in the activities authorized by this section may maintain any place of business where two or more mobile homes are displayed and offered for sale by the broker, unless the broker is also licensed as a mobile home dealer pursuant to this chapter. A person who violates this section is guilty of an infraction.

Approved March 10, 1995

Filed March 13, 1995

## CHAPTER 384

## HOUSE BILL NO. 1163

(Representative DeWitz)

(Senator O'Connell)

## MOTOR VEHICLE SAFETY BELT EXEMPTION

AN ACT to amend and reenact section 39-21-41.4 of the North Dakota Century Code, relating to the requirement of safety belts for people with medical or physically disabling conditions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-21-41.4 of the 1994 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-21-41.4. Use of safety belts required in certain motor vehicles - Enforcement. Subject to the limitations of this section and section 39-21-41.5, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or seatbelt in accordance with section 39-21-41.2; to drivers of implements of husbandry; to operators of farm vehicles as defined in subsection 5 of section 39-04-19; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all front seat safety belts are in use by other occupants. ~~From August 1, 1993, until December 31, 1993, only warning tickets may be issued for a violation of this section. A physician who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability.~~

Approved April 7, 1995

Filed April 7, 1995

## CHAPTER 385

## SENATE BILL NO. 2223

(Senator Mutch)

## FERTILIZER AND CHEMICAL TRANSPORTATION

AN ACT to amend and reenact subsection 2 of section 39-21-44 of the North Dakota Century Code, relating to the transportation of hazardous materials by fertilizer or agricultural chemical retailers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-21-44 of the North Dakota Century Code is amended and reenacted as follows:

2. The superintendent of the state highway patrol shall; ~~pursuant to chapter 28-32, adopt such rules as may be necessary~~ for the safe transportation of hazardous materials. Rules must duplicate or be consistent with current hazardous materials regulations of the United States department of transportation except that a fertilizer or agricultural chemical retailer, or a driver employed by a fertilizer or agricultural chemical retailer, is exempt from the provisions of title 49, Code of Federal Regulations, part 395, section 3, subsection b, relating to hours of service of drivers, and title 49, Code of Federal Regulations, part 395, section 8, requiring a driver's record of duty status, while exclusively engaged in the transportation of fertilizer or agricultural chemicals when the transportation is within a radius of fifty miles [80.47 kilometers] from the retailer's place of business and the employer maintains a daily record for each driver showing the time a driver reports for duty, the total number of hours a driver is on duty, and the time a driver is released from duty. The superintendent of the state highway patrol ~~is authorized to may~~ adopt the hazardous materials regulations by reference and any adoption must be construed to incorporate amendments as may be made from time to time. ~~Any proceeding under this section for issuing or modifying rules and regulations and determining compliance with rules and regulations of the superintendent of the state highway patrol must be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.~~

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 386****HOUSE BILL NO. 1392**

(Representative Timm)

**DEPARTMENT OF TRANSPORTATION MOTOR  
CARRIER REGULATION**

AN ACT to create and enact a new chapter to title 39 of the North Dakota Century Code, relating to motor carrier regulation by the department of transportation and enforcement by the highway patrol; and to provide a penalty.

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

**SECTION 1.** A new chapter to title 39 of the North Dakota Century Code is created and enacted as follows:

**Common household goods carrier defined.** In this chapter, unless the context otherwise requires, "common household goods carrier" means any person that holds oneself out to the public as willing to undertake for hire to transport by motor vehicle from place to place the household goods of others who may choose to employ that person.

**Application of chapter to intrastate commerce.** This chapter applies to persons and motor vehicles engaged in intrastate commerce only to the extent permitted by the constitution and laws of the United States and this state.

**Carriers must operate in accordance with law and rules.** It is unlawful for any common household goods carrier to transport persons or property for hire unless:

1. The carrier has obtained the certificate or permit required by this chapter; and
2. The carrier complies with this chapter and any applicable rules adopted by the department.

**Regulation of common household goods carriers by the department.** The department may regulate common motor carriers of household goods except for transportation provided wholly within a city in this state or within a distance beyond the corporate limits of a city as determined by the department and:

1. May require the filing of tariffs and schedules; and
2. Shall supervise the relations between common household goods carriers and the public to comply with the provisions of this chapter.

**Household goods carriers - Transportation of commodities.** A carrier may specify, by tariff publication, the quantity or quantities of commodities the carrier is obliged to transport.

**Household goods carrier - Certificate of public convenience - Temporary permit - Application.** No common household goods carrier may operate within this state without having obtained from the department a certificate of public convenience and

necessity. An application must be upon the form prescribed by the department. The application must contain a financial statement.

**Notice of opportunity for comment on application.** Upon the filing of an application for a certificate of public convenience and necessity or permit, the department shall mail notice of opportunity for comment to the North Dakota motor carriers association and may send notice to appropriate news media.

**Factors to be considered by department in granting certificate.** Before granting a certificate to a common household goods carrier, the department shall take into consideration the fitness and ability of applicant to provide service and any other information the department determines appropriate.

**Testimony - Issuance of certificate of permit - Conditions.** A party opposing an application may offer written testimony if that party filed a protest within twenty days of receipt of the notice. The protest must state the objection. Based upon the evidence, the department may grant or deny, in whole or in part, the certificate or permit requested.

**Reasonable rates to be made by household goods carriers.** All charges by a common household goods carrier must be reasonable and may not be unlawfully discriminatory. A carrier shall operate at the rate set in its tariff and may not refund in any manner. The use of a tariff bureau to promulgate and file a proposed tariff creates no presumption that the carrier using the bureau is violating the Constitution of North Dakota. Rate reductions may be filed with the department effective on one or more day's notice. The department has the right to suspend rate reductions within thirty days of filing.

**Certificates - Permits - Duration - Transfer.** Certificates and permits issued to carriers by the department under this chapter remain in force subject to this chapter. Those certificates or permits are transferable only upon approval by the department, after notice to and opportunity for comment by all interested parties.

**Fees - Household goods carrier.** Every household goods carrier operating in this state, when applying for a certificate of public convenience and necessity or permit, shall pay a fee of one hundred dollars. The nonrefundable fee for an application for transfer of a certificate of public convenience and necessity is one hundred dollars.

**Regulations furnished to holder of certificate or permit.** The department shall mail each holder of a certificate or permit under this chapter the rules the department adopts to implement this chapter.

**Insurance required of carrier - Liability of insurer.** The department, before granting a certificate to any common motor carrier, shall require the owner or operator to procure public liability insurance. The conditions of the liability insurance must guarantee the payment of any loss or damage to property or on account of the death or injury to any person resulting from the negligence of the carrier. The carrier shall file the insurance policy with the department and the policy must be kept in full force. Upon failure of a carrier to maintain insurance required by this section, the department shall cancel the certificate. A certificate of any company authorized to write liability or property damage insurance in the state, in a form approved by the department and certifying that there is in effect a liability insurance policy required by this section, may be filed instead of the policy.



**Deposit of fees.** The department shall deposit monthly all fees collected under this chapter in the highway fund in the state treasury.

**Enforcement of chapter.** Any law enforcement officer may make an arrest for any violation of this chapter, and the state's attorney of the county in which the offense was committed shall prosecute the offender. The highway patrol shall enforce this chapter in any part of the state. Upon written request of the department or the highway patrol, the attorney general shall prosecute or assist in the prosecution of any person alleged to have violated this chapter or any rule adopted to implement this chapter.

**Penalty.** Any person who willfully violates this chapter, or any order or rule issued or adopted under this chapter, is guilty of an infraction.

Approved April 17, 1995

Filed April 18, 1995

# MUNICIPAL GOVERNMENT

## CHAPTER 387

### HOUSE BILL NO. 1362 (Representatives Clayburgh, Glassheim)

### CITY OFFICER SALARIES

AN ACT to amend and reenact section 40-13-04 of the North Dakota Century Code, relating to salaries of city officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-13-04 of the North Dakota Century Code is amended and reenacted as follows:

40-13-04. Salaries of officers and employees fixed by ordinance - Diminution of officers' salaries during term prohibited. Except where otherwise provided ~~in this code by law~~, any officer or employee of a ~~municipality shall~~ city is entitled to receive the salary, fees, or other compensation fixed by ordinance or resolution; ~~and after.~~ After having been once fixed, the ~~same shall~~ salary of an officer may not be diminished to take effect during the term for which the officer was elected or appointed.

Approved April 11, 1995  
Filed April 12, 1995

## CHAPTER 388

## HOUSE BILL NO. 1483

(Representatives Kelsch, Mahoney)

## MUNICIPAL COURT CASE TRANSFER TO DISTRICT COURT

AN ACT to amend and reenact section 40-18-15.1 of the North Dakota Century Code, relating to the transfer of municipal court cases to district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>194</sup> SECTION 1. AMENDMENT. Section 40-18-15.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-15.1. Transfer to district court if jury trial not waived - Expenses of prosecution - Division of funds between city, county, and state. If A matter may be transferred to district court for trial only if within twenty-eight days after arraignment a the defendant has not waived requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the district court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city, county, and state may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury at least once each quarter. At the time of payment, the district court shall account under oath to the city auditor and county for all money collected.

Approved March 7, 1995

Filed March 7, 1995

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<sup>194</sup> Section 40-18-15.1 was also amended by section 1 of Senate Bill No. 2115, chapter 389.

**CHAPTER 389****SENATE BILL NO. 2115**

(Judiciary Committee)

(At the request of the Supreme Court)

**MUNICIPAL COURT CASES TRANSFERRED TO  
DISTRICT COURT**

AN ACT to amend and reenact section 40-18-15.1 of the North Dakota Century Code, relating to transfer of municipal court cases to district court when a jury trial is not waived.

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

<sup>195</sup> **SECTION 1. AMENDMENT.** Section 40-18-15.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-18-15.1. Transfer to district court if jury trial not waived - Expenses of prosecution - Division of funds and expenses between city, county, and state.** If within twenty-eight days after arraignment a defendant has not waived in writing the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the district court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city, county, and state may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury and state general fund at least once each quarter. At the time of payment, the clerk of district court shall account under oath to the city auditor ~~and~~, county, and state treasurer for all money collected. In the contract the city, county, and state may also agree to a division of expenses, including jury and witness expenses, related to cases transferred under this section. In the absence of a contract all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.

Approved April 13, 1995

Filed April 18, 1995

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<sup>195</sup> Section 40-18-15.1 was also amended by section 1 of House Bill No. 1483, chapter 388.

## CHAPTER 390

## SENATE BILL NO. 2425

(Senator Grindberg)  
(Representatives Austin, Carlson)

## CITY ELECTIONS

AN ACT to amend and reenact sections 40-21-02 and 40-21-07 of the North Dakota Century Code, relating to biennial city elections; and to repeal section 40-21-03 of the North Dakota Century Code, relating to biennial municipal elections in council cities.

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

**SECTION 1. AMENDMENT.** Section 40-21-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-21-02. Elections in commission cities** City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors. Biennial municipal elections ~~in cities operating under the commission system of government~~ must be held on the second Tuesday in June in each even-numbered year. Ten days' notice of the time and place of the election and of the offices to be filled at such election must be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09. ~~The board governing body of a city commissioners~~ shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses. For special city elections ~~that are not held under an agreement with any county the board governing body of the city commissioners~~ shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. For a special city election ~~that is not held under an agreement with any county in a precinct in which seventy-five or fewer votes were cast in the last city election, the board governing body of the city commissioners~~ may appoint one inspector and one judge. ~~Each precinct election judge, in a special city election, shall appoint a poll clerk who is a qualified elector of the precinct in which the poll clerk is to serve.~~

**SECTION 2. AMENDMENT.** Section 40-21-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-21-07. Petition for nomination of elective official in cities - Signatures required - Contents.** A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least sixty days and before ~~five~~ four p.m. on the sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city if the officer is elected at large. In cities operating under

the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before ~~five~~ four p.m. on the sixtieth day prior to the holding of the election. However, no more than three hundred signatures may be required, and the signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petition the petitioner's mailing address. If a city election is not held in conjunction with a state or county election, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before ~~five~~ four p.m. on the thirty-third day before the holding of the election.

**SECTION 3. REPEAL.** Section 40-21-03 of the 1993 Supplement to the North Dakota Century Code is repealed.

Approved April 12, 1995  
Filed April 13, 1995

## CHAPTER 391

## HOUSE BILL NO. 1122

(Representative Sandvig)

## CITY ELECTION BALLOT STATEMENTS

AN ACT to amend and reenact sections 40-21-06 and 40-21-08 of the North Dakota Century Code, relating to statements of principles on city election ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-21-06 of the North Dakota Century Code is amended and reenacted as follows:

40-21-06. Reference to party ballot or affiliation in petition of candidate for municipal office prohibited - ~~Principles stated~~. No reference ~~shall~~ may be made to a party ballot nor to the party affiliation of a candidate in a petition to be filed by or in behalf of a candidate for nomination to a public office in any incorporated city in this state. ~~Such candidate may state or have stated after his name in any such petition; in not more than twenty words; any particular principle or principles of local administrative policy or policies he stands for and seeks election to promote.~~

SECTION 2. AMENDMENT. Section 40-21-08 of the North Dakota Century Code is amended and reenacted as follows:

40-21-08. Ballots in municipalities - ~~Make-up Arrangement~~. The auditor of the city shall place only the names of the persons nominated upon the ballot. ~~Opposite or immediately below the name of each candidate on the ballot shall be placed the statement; in not more than twenty words; of the principle or principles which he seeks to promote. Such statement shall be set forth in the manner in which it appeared in the petition or petitions filed by or on behalf of such candidate; and in such manner as readily to inform the voter of the policy or policies upon which such candidate seeks election.~~ The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot ~~shall be determined by lot by such auditor~~ in the presence of the candidates or their representatives at noon on the day following the last day for the filing of the nomination papers.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 392

### HOUSE BILL NO. 1359

(Representatives Poolman, Clayburgh, Glassheim)  
(Senators Holmberg, St. Aubyn)

## SPECIAL ASSESSMENT DEPRECIATION SCHEDULES

AN ACT to amend and reenact section 40-23-19 of the North Dakota Century Code, relating to a depreciation schedule for special assessments.

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

**SECTION 1. AMENDMENT.** Section 40-23-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-23-19. Assessments on annexed property for previous benefits.** Any property that was outside the corporate limits of the municipality at the time of contracting for an improvement, which is benefited by the improvement and is subsequently annexed to the municipality, may be assessed for the improvement subject to the same conditions and by the same procedure as provided in section 40-23-18. The property that is benefited may also be assessed for any improvement, within or outside the corporate limits, which is determined by the governing body and the special assessment commission to benefit property that was outside the corporate limits at the time of contracting for the improvement, whether or not an improvement district was previously created for the improvement. For this purpose the governing body may create one or more improvement districts comprising all or part of the annexed territory. The governing body may provide for the levy of special assessments upon such property in the manner provided in this title, but may dispense with the requirements of this title as to the adoption of a resolution of necessity and the advertisement and award of a contract for the improvement. Assessment proceedings under this section are valid notwithstanding any failure of the previous proceedings to comply with the provisions of law regarding improvements to be financed by special assessments. The cost of any street improvement project that is subsequently special assessed may be the sinking fund depreciated cost based on the applicable life cycle for the type of street improvement as determined by the city engineer governing body may use a reasonable depreciation schedule for the improvement in determining the amount of any special assessment subsequently levied under this section.

Approved March 10, 1995  
Filed March 13, 1995



**CHAPTER 393****HOUSE BILL NO. 1275**

(Representatives Berg, Keiser)

**PAYMENTS IN LIEU OF TAXES ALLOCATION**

AN ACT to amend and reenact section 40-57.1-03 of the North Dakota Century Code, relating to the distribution of payments in lieu of taxes.

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

<sup>196</sup> **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the 1994 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations.** After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project upon which initial construction is begun after June 30, 1994. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and

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<sup>196</sup> Section 40-57.1-03 was also amended by section 1 of Senate Bill No. 2322, chapter 394.

in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

Approved March 14, 1995  
Filed March 14, 1995

**CHAPTER 394****SENATE BILL NO. 2322**

(Senators Heinrich, Thane)

**TAX EXEMPTION DECISION PARTICIPATION BY  
POLITICAL SUBDIVISIONS**

AN ACT to amend and reenact section 40-57.1-03 of the North Dakota Century Code, relating to inclusion of school board and township representatives in deliberations on granting property tax exemptions or payments in lieu of taxes for new industries; and to provide an expiration date.

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

<sup>197</sup> **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the 1994 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations.** After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project upon which initial construction is begun after June 30, 1994. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of

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<sup>197</sup> Section 40-57.1-03 was also amended by section 1 of House Bill No. 1275, chapter 393.

payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

During deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality must include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 1997, and after that date is ineffective.

Approved March 10, 1995  
Filed March 13, 1995

**CHAPTER 395****SENATE BILL NO. 2353**

(Senators Nething, Robinson, Wanzek)  
(Representatives Hanson, Kroeber, Sabby)

**JOINT JOB DEVELOPMENT AUTHORITIES**

AN ACT to create and enact a new section to chapter 40-57.4 of the North Dakota Century Code, relating to joint job development authorities.

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

**SECTION 1.** A new section to chapter 40-57.4 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

**Joint job development authority.** The governing bodies of a city and one or more other political subdivisions, by resolution, may create a joint job development authority. If the authority is created, the governing bodies of the political subdivisions shall appoint a board of directors in the size and manner established in the resolution. The resolution must include provision for discontinuing the authority by the governing bodies. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by a petition signed by qualified electors of a political subdivision within the authority equal in number to ten percent of the votes cast in that political subdivision for the office of governor at the last general election. The question to discontinue the authority requires a majority of the electors voting on the question in that political subdivision for passage. If a majority of the electors voting on the question vote to discontinue the authority in a political subdivision creating the authority, the authority is discontinued. A joint job development authority in which a city is participating may exercise any of the functions and powers of a city job development authority under this chapter.

Approved April 4, 1995  
Filed April 4, 1995

# UNIFORM COMMERCIAL CODE

## CHAPTER 396

### SENATE BILL NO. 2313

(Senators Urlacher, Mathern)  
(Representatives Brown, Jacobs, Kretschmar)

## CENTRAL FILING SYSTEM FEES

AN ACT to amend and reenact sections 1 and 3 of chapter 411 of the 1993 Session Laws, relating to filing fees for filing documents in the Uniform Commercial Code central filing system and to the expiration date for fees for obtaining information from the Uniform Commercial Code central filing system; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 1 of chapter 411 of the 1993 Session Laws is amended and reenacted as follows:

**SECTION 1.** A new section to chapter 41-09 of the North Dakota Century Code is created and enacted as follows:

**Surcharge on filing fees.** In addition to the fees provided elsewhere for filing documents in the central filing data base system, each register of deeds and the secretary of state shall charge an additional two dollar and fifty cent fee for each original filing, amendment, continuation, assignment, release, or partial release filed. All the fees collected under this section must be deposited into the general a special fund in the state treasury for allocation, after appropriation by the legislative assembly, to counties for the continued improvement and maintenance of the central filing system by the secretary of state.

**SECTION 2. AMENDMENT.** Section 3 of chapter 411 of the 1993 Session Laws is amended and reenacted as follows:

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through ~~June 30, 1995~~ December 31, 1996, and after that date is ineffective.

**SECTION 3. APPROPRIATION.** There is hereby appropriated out of any moneys in the special fund in the state treasury, established in section 1 of this Act and not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of carrying out section 1 of this Act, for the biennium beginning July 1, 1995, and ending December 31, 1996.

Approved April 11, 1995  
Filed April 12, 1995

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 397

### SENATE BILL NO. 2168

(Finance and Taxation Committee)

(At the request of the Secretary of State)

## CONTRACTOR LICENSING AND REGULATION

AN ACT to amend and reenact subsection 4 of section 43-07-01, sections 43-07-02, 43-07-04, 43-07-08, 43-07-09, 43-07-10, 43-07-14, and 43-07-18 of the North Dakota Century Code, relating to the licensure and regulation of contractors by the secretary of state; to repeal section 43-07-11 of the North Dakota Century Code, relating to a contractor's bond; and to provide a civil penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 4 of section 43-07-01 of the North Dakota Century Code is amended and reenacted as follows:

4. A "public contract" is a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of five hundred two thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in such subcontract exceeds the sum of five hundred two thousand dollars.

**SECTION 2. AMENDMENT.** Section 43-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-02. License required - Enjoining operation without license.** No person may engage in the business nor act in the capacity of a contractor within this state when the original contract or subcontract cost, value, or price exceeds the sum of five hundred two thousand dollars without first having a license as provided in this chapter. The secretary of state may request the attorney general to bring an action to enjoin any person from engaging in the business or acting in the capacity of a contractor within this state when the original contract or subcontract cost, value, or price exceeds the sum of five hundred two thousand dollars, unless the person is properly licensed.

**SECTION 3. AMENDMENT.** Section 43-07-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-04. License - How obtained - Revocation.** To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe,

an application under oath containing a statement of the applicant's experience and qualifications as a contractor; ~~and the names of three persons who are knowledgeable about the applicant's experience and qualifications.~~ A bond, as prescribed in section 43-07-11, ~~and a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor.~~ The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. No sooner than ten days after sending written notice to a contractor at the contractor's last known address, the registrar shall revoke the license of any contractor who fails to maintain liability insurance coverage required by this section or by section 43-07-10, or who fails to file, renew, or properly amend any fictitious name certificate required by chapter 45-11 for any contractor. Any person refused a license by the registrar or whose license is revoked pursuant to this section may appeal to the district court of Burleigh County, if a nonresident, or to the district court of the county of residence, if a resident of this state.

**SECTION 4. AMENDMENT.** Section 43-07-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-08. Exceptions.** This chapter does not apply to:

1. Any authorized representative or representatives of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district, or other political corporation.
2. Any person who furnishes any fabricated or finished product, material, or article of merchandise which is not incorporated into or attached to real property by such person so as to become affixed thereto.
3. ~~Any person who contracts to furnish labor only and for an amount not in excess of five thousand dollars.~~

**SECTION 5. AMENDMENT.** Section 43-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-09. Duty of registrar - Expiration of license.** The ~~Within fifteen days from the date of application, the registrar shall~~ may investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the ~~expiration of ten days after the date the registrar receives all documentation necessary to obtain a license. A copy of the required documentation sent by facsimile also commences the counting of the ten-day waiting period but a license may not be issued until original copies of all the documents and the appropriate fee is received by the registrar.~~ The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending February first.

**SECTION 6. AMENDMENT.** Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:



**43-07-10. Renewal of license - Time requirements - Revocation of license for failure to renew.** Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, accompanied by two copies of which includes a listing of each contract or subcontract obtained by the licensee during the preceding fiscal calendar year in this state over the amount of ten thousand dollars, the nature of the work contracted or subcontracted, and, if a performance bond was required by the contract, the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward one a copy of the list to the state tax commissioner and shall also indicate whether the license of the applicant was renewed by the registrar. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of February March of each ~~successive~~ fiscal year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued ~~to the contractor, the new class license may be issued only upon the showing, under the terms and conditions, and upon the payment of the fee required for the issuance of an original the license of the class applied for. All certificates of renewal in which the applicant does not apply for a change in the class of license must be issued by the registrar to the applicant when the application is properly filed and the renewal fee is paid.~~ If any contractor fails to file an application for a certificate of renewal when due, the registrar shall revoke the contractor's license. The registrar shall notify by mail a contractor whose license is revoked of the revocation within sixty days after the filing deadline. The contractor may then renew the license within ninety days after the filing deadline by paying a penalty fee of ~~twenty-five~~ seventy-five percent of the license renewal fee set forth in section 43-07-07, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation and waiting period prescribed authorized in section 43-07-09. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

**SECTION 7. AMENDMENT.** Section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-14. Complaint for license cancellation.** Any person, including an employee or agent of the registrar, may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

1. Abandonment of any contract without legal excuse. A rebuttable presumption of abandonment arises if:
  - a. A contractor fails to commence any work agreed upon in writing within sixty days of a starting date agreed upon in writing; or



**CHAPTER 398****HOUSE BILL NO. 1102**

(Representative Soukup)

(At the request of the Department of Transportation)

**CONTRACTOR'S BID REQUIREMENT EXEMPTIONS**

AN ACT to amend and reenact section 43-07-12 of the North Dakota Century Code, relating to exemptions from contractor's bid requirements.

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

**SECTION 1. AMENDMENT.** Section 43-07-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-12. Bids to show license issued.** All bids and proposals for the construction of any public contract project subject to the provisions of this chapter must contain a copy of the license or certificate or renewal thereof issued by the secretary of state enclosed in the required bid bond envelope. No contract may be awarded to any contractor unless ~~he~~ the contractor is the holder of a license in the class within which the value of the project falls as hereinbefore provided. A contractor must be the holder of a license at least ten days prior to the date set for receiving bids, to be a qualified bidder. A bid submitted without this information properly enclosed in the bid bond envelope may not be read nor considered and must be returned to the bidder. This section does not apply to bids submitted:

1. To the department of transportation; ~~or~~
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418];
3. To the public service commission; or
4. For use of federal aid highway funds authorized by Public Law No. 85-767 [72 Stat. 885; 23 U.S.C. 101 et seq.].

Approved March 7, 1995

Filed March 7, 1995

**CHAPTER 399****HOUSE BILL NO. 1361**

(Representatives Clayburgh, Glassheim, Poolman)  
(Senators St. Aubyn, W. Stenehjem)

**PUBLIC CONTRACT WITHHOLDING BY LABOR  
COMMISSIONER**

AN ACT to amend and reenact sections 43-07-20 and 43-07-21 of the North Dakota Century Code, relating to employment preferences for North Dakota residents and veterans and to the withholding of a portion of a public contract price.

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

**SECTION 1. AMENDMENT.** Section 43-07-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-20. Employment preference in contract.** In all contracts, except those which involve federal-aid funds and where a preference or discrimination would be contrary to a federal law or regulation, hereafter let for state, county, city, school district, or township construction, repair, or maintenance work under any laws of this state, there shall be inserted a provision by which the contractor must give preference to the employment of bona fide North Dakota residents, as determined by section 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in section 37-19.1-01, who are deemed to be qualified in the performance of ~~said that~~ work. ~~Such~~ The preference shall not apply to engineering, superintendence, management, or office or clerical work.

No contract shall be let to any person, firm, association, cooperative, corporation, or limited liability company refusing to execute an agreement containing the aforementioned provisions.

**SECTION 2. AMENDMENT.** Section 43-07-21 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-21. Penalty - Injunction proceedings.** Any person violating any provisions of section 43-07-20 is guilty of a class B misdemeanor. A repeated violation constitutes legal grounds for a court, on proper application by the commissioner of labor, to grant an injunction without requiring the posting of a bond or undertaking. ~~All contracts must provide that one thousand dollars of the contract price is to be withheld in addition to any other withholding until it has been determined by the commissioner of labor that no action or fines are pending.~~

Approved March 21, 1995  
Filed March 21, 1995

**CHAPTER 400****SENATE BILL NO. 2133**

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

**ELECTRICAL SERVICES ADVERTISING**

AN ACT to amend and reenact subsection 1 of section 43-09-09.2 of the North Dakota Century Code, relating to advertising of electrical services.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 43-09-09.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in this section, where an electrical license is required under section 43-09-09 or by local ordinance, no person ~~offering electrical services may advertise as an electrical contractor, master electrician, or class B electrician unless the person employs a licensed journeyman electrician, or the person is a licensed master electrician or class B electrician. Any advertisement must contain the appropriate license number. This section does not apply to advertising purchased or contracted for prior to July 1, 1989 may advertise to contract for electrical services without being licensed as or being associated with a class B or master electrician unless that person intends to contract the electrical services with a licensed electrical contractor.~~

Approved April 11, 1995  
Filed April 12, 1995

**CHAPTER 401****HOUSE BILL NO. 1407**  
(Representatives Galvin, Mahoney)**COSMETOLOGY LICENSES**

AN ACT to create and enact two new sections to chapter 43-11 of the North Dakota Century Code, relating to master esthetician, master manicurist and homebound licenses; and to amend and reenact sections 43-11-01, 43-11-21, subsection 1 of section 43-11-26, and subdivision a of subsection 1 of section 43-11-28 of the North Dakota Century Code, relating to cosmetology licenses and fees.

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

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

**43-11-01. Definitions.** In this chapter, unless the context or subject matter thereof otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology is defined and includes, but otherwise is not limited thereby, the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
3. "Cosmetology salon" includes that part of any building wherein the occupation of a cosmetologist is practiced.
4. "Demonstrator" means any person who possesses the qualifications of a cosmetologist and who is granted permission to promote a product or technique in this state for a limited time in accordance with rules adopted by the board.
5. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.

6. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
7. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
- ~~7+~~ 8. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- ~~8+~~ 9. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
- ~~9+~~ 10. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~10+~~ 11. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
- ~~11+~~ 12. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
- ~~12+~~ 13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person.
- ~~13+~~ 14. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
- ~~14+~~ 15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
16. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

**SECTION 2. AMENDMENT.** Section 43-11-21 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-21. Operator's license - Examination required - Application - Examination - Fees.** Each person who desires to secure an operator's license shall file with the secretary of the board a written application under oath on a form supplied by the board. The application must be accompanied by:

1. A health certificate ~~issued~~ signed by a licensed physician;
2. Satisfactory proof of the educational and moral qualifications required of a student;

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

**SECTION 3. AMENDMENT.** Subsection 1 of section 43-11-26 of the North Dakota Century Code is amended and reenacted as follows:

1. Furnishing to the board evidence of being at least eighteen years of age and having practiced as a licensed operator ~~in this state~~ for at least one hundred twenty-five days.

**SECTION 4.** Two new sections to chapter 43-11 of the North Dakota Century Code are created and enacted as follows:

License - Master esthetician and master manicurist. The board may issue annual licenses for a master esthetician and a master manicurist. The board shall determine the qualifications for licensure and annual license fees for the licenses.

Homebound license. The board may issue annual homebound licenses. The board shall determine the qualifications for licensure and annual license fees for a homebound license.

**SECTION 5. AMENDMENT.** Subdivision a of subsection 1 of section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

a. Original registrations, licenses, and annual renewals:	MAXIMUM FEE:
(1) <del>Cosmetology salons</del> <u>Salons</u> , original registration	\$ 75.00
(2) <del>Cosmetology salons</del> <u>Salons</u> , annual renewal	\$ 25.00
(3) School of cosmetology, original registration	\$500.00
(4) School of cosmetology, annual renewal	\$200.00
(5) Operator, original license	\$ 10.00
(6) Operator, annual renewal	\$ 10.00
(7) Manager-operator, original license	\$ 20.00
(8) Manager-operator, annual renewal	\$ 15.00
(9) Instructor, original license	\$ 30.00
(10) Instructor, annual renewal	\$ 15.00
(11) Demonstrators, original license	\$ 25.00
(12) Demonstrators, annual renewal	\$ 15.00
(13) Reciprocity license fee	\$100.00
(14) Registration fee for student instructor	\$ 10.00
(15) Duplicate license	\$ 5.00
(16) Penalty fee for late renewal	\$ 10.00
(17) Certification fee	\$ 15.00

Approved April 7, 1995  
Filed April 7, 1995



## **CHAPTER 402**

### **SENATE BILL NO. 2404**

(Senators Solberg, Freborg, Grindberg)  
(Representatives DeKrey, Poolman, Sitz)

## **COSMETOLOGY PRACTICE EXEMPTIONS**

AN ACT to create and enact a new subsection to section 43-11-02 of the North Dakota Century Code, relating to exemptions from cosmetology regulations.

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

**SECTION 1.** A new subsection to section 43-11-02 of the North Dakota Century Code is created and enacted as follows:

Services provided in a licensed hospital or a nursing home by a person practicing cosmetology on a volunteer basis without compensation or by a nurse's assistant.

Approved March 31, 1995  
Filed April 3, 1995

**CHAPTER 403****SENATE BILL NO. 2192**

(Human Services Committee)

(At the request of the North Dakota Board of Nursing)

**NURSING PRACTICE AND LICENSING**

AN ACT to amend and reenact sections 32-03.1-06, 43-12.1-01, 43-12.1-02, 43-12.1-03, 43-12.1-04, 43-12.1-05, 43-12.1-06, 43-12.1-08, 43-12.1-09, 43-12.1-10, 43-12.1-11, 43-12.1-12, 43-12.1-13, 43-12.1-14, 43-12.1-15, and 43-17-02 of the North Dakota Century Code, relating to the practice of nursing; to repeal sections 43-12-26.1, 43-12-27, 43-12.1-08.1, 43-12.1-13.1, 43-12.1-13.2, and 43-12.1-14.1 of the North Dakota Century Code, relating to definitions applicable to and duties of the board of nursing, the practice of nursing, and the disciplining of persons assisting nurses; to provide for a joint rulemaking committee; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 32-03.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**32-03.1-06. Limited repealer.** This chapter supersedes any conflicting provision of law which is inconsistent with this chapter except sections 23-27-04.1, 32-03-40, 32-03-42, 39-08-04.1, ~~43-12.1-13.1, 43-12.1-13.2~~ 43-12.1-12, 43-17-37, and 43-17-38.

**SECTION 2. AMENDMENT.** Section 43-12.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-01. Statement of policy.** The legislative assembly finds that the practice of nursing is directly related to the public welfare of the citizens of the state of North Dakota and is subject to regulation and control in the public interest to assure that qualified, competent practitioners and high quality standards are available. ~~It is essential to govern qualifications for nursing practice with requirements for the maintenance of high standards and to state sanctions by which an illicit, unqualified, dishonest person or one that is otherwise against the public interest can be disciplined. The legislative assembly further declares that it is the policy of this state to regulate through the board of nursing the practice of nursing; those engaged in licensed nursing practice; and all persons who assist in the practice of nursing. A person who practices or offers to practice nursing or who represents that the person is licensed under this chapter or is qualified to assist in the practice of nursing without qualifying under this chapter endangers the public health. This chapter must be liberally construed in order to carry out its purposes and objectives. The legislative assembly recognizes that the practice of nursing is continually evolving and responding to changes within health care patterns and systems and recognizes the existence of overlapping functions within the practice of nursing and other providers of health care.~~

**SECTION 3. AMENDMENT.** Section 43-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Assistant to the nurse" means, without regard to agency title, a person who is authorized to perform nursing functions or nursing tasks legally delegated and supervised by a licensed nurse. "Advanced practice registered nurse" means a person who holds a current license to practice in this state as an advanced practice registered nurse and either has a graduate degree with a nursing focus or has completed the educational requirements in effect when the person was initially licensed.
2. "Board" means the North Dakota board of nursing.
3. "Licensed practical nurse" means one a person who holds a current license to practice in this state as a licensed practical nurse and either has met all legal requirements for licensure and holds a current license to practice in this state as a licensed practical nurse an associated degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed.
4. "Licensee" means any person who has ever held a license; a temporary license; or a temporary permit to practice; or currently holds a license; a temporary license; or a temporary permit to practice as a registered nurse or a licensed practical nurse in this state. "Nurse" means any person currently licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse.
5. The "practice of nursing as a licensed practical nurse" means the performance of those services; requiring the basic knowledge of biological science and technical skills; commonly performed by a licensed practical nurse under the direction of a registered nurse; licensed physician; or dentist for the purpose of:
  - a. The maintenance of health and prevention of illness.
  - b. The observation and nursing care of persons experiencing changes in their health processes.
  - c. Administering prescribed medications and treatments.
  - d. Teaching and evaluating health practices of patients.
  - e. Providing specialized nursing care when such service is authorized by the board through its rules and delegated by a registered nurse; physician; or dentist; to a licensed practical nurse who has had additional preparation or experience.
- "Nurse assistant" means a person who is authorized by the board to perform nursing tasks delegated and supervised by a licensed nurse.
6. The "practice of nursing as a registered nurse" means the performance of acts requiring the specialized knowledge, judgment, and skill based on principles of the biological, physical, behavioral, and social sciences in "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. Nursing includes the following acts, which may not be deemed to include acts of medical

diagnosis or treatment or the practice of medicine as defined in chapter 43-17:

- a. The maintenance of health and prevention of illness.
  - b. Diagnosing human responses to actual or potential health problems.
  - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding and referral of persons who are ill, injured, or experiencing changes in the normal health processes.
  - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
  - e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of a medical the health care regimen as prescribed or authorized by a licensed physician or dentist by a health care practitioner licensed under title 43.
  - f. The performance of such additional acts, including prescriptive practices under the supervision of a licensed physician, which are recognized by the nursing profession as proper to be performed by registered nurses who have had advanced preparation and are authorized by the board through its rules to perform such acts. For purposes of this subdivision:
    - (1) "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist. Prescriptive practices must be consistent with the scope of practice submitted by the registered nurse to obtain advanced licensure.
    - (2) "Supervision of a licensed physician" means performance under a contract with a licensed physician for review and acknowledgement of appropriate prescriptive practices for implementation by the registered nurse with advanced licensure who is authorized by the board to write a prescription to be filled by a licensed pharmacist.
7. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.
  8. "Registered nurse" means one a person who holds a current license to practice in this state as a registered nurse and either has met all legal requirements for licensure and holds a current license to practice in this state as a registered nurse a baccalaureate degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed.

SECTION 4. AMENDMENT. Section 43-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-03. License required - Title - Abbreviation.** All persons who practice as a registered nurse or a practical nurse for direct or indirect compensation in this state must hold a current valid license from this state. A person who holds a current valid license to practice as a registered nurse in this state may use the title "registered nurse" and the abbreviation "R.N.". A person who holds a current valid license to practice as a practical nurse in this state may use the title "licensed practical nurse" and the abbreviation "L.P.N.". No other person may assume or claim any such title or abbreviations. Any person who provides nursing care to a resident of this state must hold a current license or registration issued by the board. It is unlawful for a person to practice nursing, offer to practice nursing, assist in the practice of nursing, or use any title, abbreviation, or designation to indicate that the person is practicing nursing or assisting in the practice of nursing in this state unless that person is currently licensed or registered under this chapter. A currently licensed advanced practice registered nurse may use titles approved by the board; a currently licensed registered nurse may use the abbreviation "R.N."; a currently licensed practical nurse may use the abbreviation "L.P.N."; and a nurse assistant with current registration may use the title identified by the employer. A person may not use the title "nurse" or be referred to as a "nurse" unless licensed by the board.

<sup>199</sup> **SECTION 5. AMENDMENT.** Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-04. Persons exempt from provisions of chapter.** This chapter does not apply to:

1. Persons who ~~give nursing assistance~~ perform nursing tasks in cases of emergency or disaster.
2. Students practicing nursing as a part of a board-approved nursing education program.
3. Legally licensed nurses of another state ~~who are~~ employed in this state by the United States government or ~~a bureau, division, or agency thereof~~ any of its bureaus, divisions, or agencies.
4. ~~Legally licensed nurses of~~ A nurse licensed by another state or Canada, whose employment requires ~~them~~ the nurse to accompany and care for a patient ~~who is in transit for medical treatment~~ health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. A person who provides nursing care or performs nursing functions or nursing tasks for an immediate family member.
- 6+ 7. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.

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<sup>199</sup> Section 43-12.1-04 was also amended by section 1 of Senate Bill No. 2239, chapter 404.

8. A person licensed or registered under this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person who is not licensed under this chapter and who provides medication administration according to individual needs and as part of an individual habilitation or case plan:
  - a. Within a developmental disabilities provider agency licensed under chapter 25-16;
  - b. Within a foster care provider agency licensed under chapter 50-11; or
  - c. Through, or under contract with, a human service center licensed under chapter 50-06.

A licensed nurse may delegate medication administration to a person exempt under this section.

**SECTION 6. AMENDMENT.** Section 43-12.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-05. Board of nursing - Composition - Term of office.** There is a state board of nursing whose members must be appointed by the governor which must consist of five registered nurses, three licensed practical nurses, and one public member. Each board member must be appointed for a term of four years. No appointee may be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. ~~The term of the public member must coincide with that of the governor.~~ Terms of licensed nurse board members must be evenly distributed to allow two licensed nurse board members to be appointed or reappointed each year. ~~Two of the licensed nurse board member terms expiring June 30, 1989, must be filled by appointment or reappointment for terms of three years to provide for even distribution of terms of licensed nurse board members.~~ The members of the board holding office on the effective date of this Act may continue to serve as members for their respective terms.

**SECTION 7. AMENDMENT.** Section 43-12.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-06. Qualifications of board members.**

1. ~~Each registered nurse board member must be:~~
  - a. ~~A citizen of the United States; a resident of North Dakota for two years; and currently residing in North Dakota.~~
  - b. ~~A current holder of a valid North Dakota license to practice as a registered nurse.~~
  - c. ~~Experienced for at least five years in nursing and currently engaged in the practice of nursing in North Dakota.~~
2. ~~Each licensed practical nurse board member must be:~~

- a. A citizen of the United States; a resident of North Dakota for two years; and currently residing in North Dakota.
  - b. A current holder of a valid North Dakota license to practice as a licensed practical nurse.
  - c. Experienced for at least five years as a licensed practical nurse and currently engaged in the practice of practical nursing in North Dakota.
3. Each public member must be a citizen of the United States; a resident of North Dakota for two years; and currently residing in North Dakota except any person or his or her spouse who:
- a. Is a licensee of any health occupation board.
  - b. Is an employee of any health care facility, agency, corporation, or limited liability company authorized to underwrite health care insurance.
  - c. Has financial interests in or is engaged in the governance and administration of a health care facility, agency, corporation, or limited liability company.
  - d. Is a salaried employee of state or federal agencies providing health care delivery.
1. Each registered nurse must be an eligible voting resident of this state, possess an unencumbered registered nurse license under this chapter, and be currently engaged in practice as a registered nurse.
2. Each licensed practical nurse must be an eligible voting resident of this state, possess an unencumbered practical nurse license under this chapter, and be currently engaged in practice as a licensed practical nurse.
3. Each public member must be an eligible voting resident of this state and have no employment, professional license, or financial interest with any health care entity.

Each member appointed to the board shall maintain the qualifications for appointment for the duration of the appointment. The governor may remove any member of the board for cause upon recommendation of two-thirds of the members of the board.

SECTION 8. AMENDMENT. Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-08. Powers and duties of the board. The board shall:

- 1. Maintain an office to conduct business.
- 2. Employ an executive director and such other professional and secretarial staff as may be required.
- 3. Establish fees and receive all moneys collected under this chapter.

4. Authorize all expenditures necessary for conducting the business of the board. Any balance of such fees after payment of expenditures is to be used in administering the provisions of this chapter.
5. Report all receipts and expenditures of said funds at the close of each fiscal year to the governor.
6. Establish standards for all nursing education programs or acknowledge programs accredited by national nursing accrediting agencies.
7. Conduct surveys as necessary of nursing education programs required to meet board standards.
8. Approve such nursing education programs which meet board standards.
9. Conduct a licensing examination at least once a year for entry into practice as a registered nurse or licensed practical nurse.
10. License candidates who qualify by examination or endorsement as registered nurses or licensed practical nurses.
11. Maintain a permanent register of the names of all persons to whom licenses to practice as a registered nurse or a licensed practical nurse are issued. Such register shall be open to public inspection.
12. Renew licenses periodically.
13. Adopt rules under chapter 28-32 for renewal of licenses after an absence of five years from the active practice of nursing.
14. Discipline licensees as necessary.
15. Establish standards for quality of practice for registered nurses and licensed practical nurses after consultation with the North Dakota state nurses association; the North Dakota licensed practical nurses association; and other professional nursing groups.
16. Establish standards for quality of practice for registered nurses and licensed practical nurses functioning in advanced practice roles after consultation with the North Dakota state nurses association; the North Dakota licensed practical nurses association; and other recognized nursing specialty groups.
17. Execute any legitimate project pertaining to nursing education or practice.
18. Adopt such rules under chapter 28-32 as are necessary to carry out the provisions of this chapter. The board shall involve active participation of all appropriate state education agencies and representatives of public and proprietary institutions which are involved in and responsible for funding or operation of such programs; in the establishment of such standards and approval of programs.
19. Issue temporary licenses to persons who do not meet the educational qualifications in section 43-12.1-12 but meet all other requirements. A temporary license may be issued only once and may be renewed for a



period of four consecutive years or for a longer period if determined appropriate by the board. The board by administrative rule may identify the requirements for issuance and renewal of the temporary license each year based upon progress towards meeting the educational requirements identified in section 43-12.1-12.

20. Conduct public hearings before adopting any rules or standards.
21. Establish, implement, and maintain a registry of each person who meets the definition of assistant to the nurse.

regulate the practice of nursing to assure that qualified competent practitioners and high quality standards are available. Regulation of the profession of nursing must ensure that no person may practice or offer to practice nursing or use titles of advanced practice registered nurse, registered nurse, licensed practical nurse, nurse assistant, or titles of a similar nature which denote the practice of nursing to the general public unless licensed or registered as provided in this chapter. The board shall:

1. Enforce the provisions of this chapter. The board has all of the duties, powers, and authority specifically granted by and necessary for the enforcement of this chapter.
2. Adopt rules necessary to administer this chapter.
3. Appoint and employ a qualified registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
4. Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.
5. Establish qualifications for nursing licensure and registration.
6. Establish standards for nursing education and practice and:
  - a. Collaborate and consult with the appropriate nursing organizations and other affected parties in the establishment of the standards; and
  - b. Consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses. Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse and include evidence of a collaborative agreement with a licensed physician.
7. Periodically review and approve nursing education programs.
8. License and register applicants and renew and reinstate licenses and registrations.
9. Establish standards for assessing the competence of licensees and registrants continuing in or returning to practice.

10. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.
11. Issue limited licenses to individuals requiring accommodation to practice nursing.
12. Establish programs for the rehabilitation of nurses with workplace impairments.
13. Discipline licensees and registrants for violating this chapter.
14. Establish a nursing student loan program funded by license fees to encourage persons to enter and advance in the nursing profession.
15. Establish a registry of persons licensed or registered by the board.
16. Collaborate and consult with the North Dakota nurses association, North Dakota licensed practical nurses association, and other nursing specialty groups prior to the adoption of rules.
17. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
18. Conduct and support projects pertaining to nursing education and practice.
19. Notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of advanced practice registered nurses authorized to write prescriptions.
20. Adopt rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.

SECTION 9. AMENDMENT. Section 43-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-09. Removal from board** ~~Licensure - Registration. The governor may remove any member of the board of nursing for cause upon recommendation of two-thirds of the members of the board.~~ Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:

1. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
  - a. Submit a completed application and appropriate fee as established by the board;
  - b. Submit an official transcript showing completion of a board approved nursing education program preparing for the level of licensure sought; and
  - c. Pass an examination approved by the board.
2. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:

- a. Submit a completed application and appropriate fee as established by the board;
  - b. Submit an official transcript showing completion of a nursing education program equal to or exceeding the requirements for nursing education programs in place in this state at the time the applicant qualified for initial licensure;
  - c. Submit proof of initial licensure by examination with the examination meeting the state requirements for licensure examinations in effect at the time the applicant qualified for initial licensure; and
  - d. Submit evidence of current unencumbered licensure in another state or territory or meet continued competency requirements as established by the board.
3. If an applicant for licensure by endorsement does not meet the educational requirements for the appropriate level of licensure as established by the board, a transitional license may be issued. A transitional license may be issued and renewed according to board rules. Renewal requires proof of progression towards meeting the educational requirements.
4. An applicant for licensure as an advanced practice registered nurse shall:
  - a. Submit a completed application and appropriate fee as established by the board;
  - b. Submit evidence of appropriate education and current certification in an advanced nursing role by a national nursing organization meeting criteria as established by the board; and
  - c. Possess or show evidence of application for a current unencumbered registered nurse license.
5. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state prior to the effective date of this Act may apply for and receive an advanced practice license if that person meets the requirements that were in place in this state at the time the applicant qualified for initial advanced practice licensure in that state.
6. An applicant for nurse assistant registration shall:
  - a. Submit a completed application and the appropriate fee as established by the board; and
  - b. Provide verification of appropriate training and evaluation in the performance of basic nursing tasks.

**SECTION 10. AMENDMENT.** Section 43-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-10. License by examination - Registration - Renewal.** The board may issue a license to practice as a registered nurse or a licensed practical nurse to an applicant for license by examination if the applicant:

- 1- Shows evidence of satisfactory completion of the appropriate nursing education program approved by the board or completion of a nursing education program located in another country or approved by another board of nursing which meets or exceeds the standards for registered or practical nursing programs in North Dakota;
- 2- Has submitted a completed application and fee for licensure by examination and has written and passed the licensing examination given by the board;
- 3- Is a resident of North Dakota; or has accepted employment in North Dakota or with a federal agency.

Authorization to practice nursing between the dates of graduation and notification of the results of the first licensing examination for which the candidate is eligible may be issued by the board to a candidate who meets requirements set by the board:

1. A current license to practice as an advanced practice registered nurse, registered nurse, or licensed practical nurse must be issued upon proof that the applicant meets all requirements for licensure and is a resident of North Dakota or upon verification of employment in North Dakota or by a federal agency. If a person does not renew a license before its expiration date, the license may be reinstated if that person meets the requirements set by the board.
2. A nurse assistant may renew registration upon submission of a renewal application and documentation of competency by the employer. A lapsed nurse assistant registration may be renewed upon submission of the application, payment of the fee, and documentation of competency.

**SECTION 11. AMENDMENT.** Section 43-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-11. License - When issued Duties of licensees.** A current license to practice will be issued upon proof that the applicant meets all requirements for licensure and is a resident of North Dakota or upon verification of employment in North Dakota or a federal agency. Each person licensed by the board shall provide information requested by the board at the time of renewal. Each person licensed by the board shall report to the board any knowledge of the performance by others of those acts or omissions that are violations of this chapter or grounds for disciplinary action as set forth in section 43-12.1-14. Each licensed nurse shall report to the board any judgment or settlement in a professional or occupational malpractice action to which the licensee is a party. Any person, other than a licensee alleged to have violated this chapter, participating in good faith in making a report, assisting in an investigation, or furnishing information to an investigator, is immune from any civil or criminal liability that otherwise may result from reporting required by this section. For the purpose of any civil or criminal proceeding the good faith of any person required to report under this section is presumed.

**SECTION 12. AMENDMENT.** Section 43-12.1-12 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-12. License by endorsement Emergency treatment by nurses. The board may issue a license to practice as a registered nurse or licensed practical nurse to an applicant from another state by endorsement if the applicant:

1. Has satisfactorily completed the appropriate nursing education program in another country or the appropriate nursing education program approved by a board of nursing in the United States. For purposes of this subsection, "appropriate nursing education program" means one that meets or exceeds standards for registered or practical nursing programs in North Dakota at the time the applicant qualified for initial licensure outside of North Dakota.
2. Has been duly licensed in another state or country on the basis of passing a licensing examination acceptable to the board.
3. Is a resident of North Dakota or has accepted employment in North Dakota.

Upon receipt of the completed application for license by endorsement, payment of fee as set by the board, and evidence that an applicant will meet all the requirements for licensure in North Dakota, the board may issue a temporary permit to practice as a registered nurse or licensed practical nurse in this state until the license is issued. Such temporary permit expires at the end of ninety days and may be renewed only for reasons satisfactory to the board. A nurse licensed under this chapter, who, in good faith, provides nursing care at the scene of an emergency, may provide only that nursing care as in the nurse's judgment is at the time indicated. In the event of a disaster, a licensed nurse may initiate any therapeutic measure that is indicated according to that nurse's judgment.

SECTION 13. AMENDMENT. Section 43-12.1-13 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-13. Renewal of license Disciplinary proceedings. The board shall renew nursing licenses periodically and may adopt rules under chapter 28-32, after consultation with duly organized professional nursing organizations recognized by the state board of nursing and with employers of nurses, to determine eligibility for renewal of license before reissuing such licenses. Upon meeting board requirements for renewal of license and paying the renewal fee as set by the board, a current license will be issued. If a registered nurse or a licensed practical nurse fails to renew a license by January first of the appointed year, the license may be reinstated if the licensee meets the requirements set by the board. Disciplinary proceedings under this chapter must be conducted in accordance with chapter 28-32. Fees of up to one thousand dollars or the assessment of costs and disbursements, or both, may be imposed against a respondent in addition to any licensure or registration sanctions the board may impose. An appeal from the final decision of the board may be taken to the district court of Burleigh County under chapter 28-32. The board shall furnish to the boards of nursing of other states and to health care agencies of this state, a list of the names and addresses of licensees or registrants who have been disciplined by the board.

SECTION 14. AMENDMENT. Section 43-12.1-14 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-14. Grounds for discipline - Penalties. The board shall have the power to discipline licensees as necessary by reprimanding the licensee, placing the

licensee on probationary status; denying; suspending; or revoking a license or permit to practice nursing issued in accordance with this chapter if the person is found:

1. To be guilty of fraud or deceit in procuring or attempting to procure a license or permit to practice nursing;
2. To have had a license to practice nursing suspended or revoked in another jurisdiction which has not been reinstated;
3. To have been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a nurse; or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1;
4. To be guilty of unprofessional conduct likely to deceive, defraud, or harm the public;
5. To be practicing nursing incompetently by reason of negligent acts;
6. To be mentally or physically unsafe for nursing practice;
7. To be practicing as a registered nurse or a licensed practical nurse unless currently licensed to do so.

Any person may file a written sworn complaint with the executive director of the board charging a licensee with having committed any of the actions specified as grounds for discipline. All written complaints filed with the board will be investigated according to board rules. If the investigation reveals grounds to support the charges made against the licensee, the executive director of the board will initiate the hearing procedure in accordance with chapter 28-32. The board shall fix a time and place for a hearing. If the licensee is found to have committed any of the charges in the complaint, the board may reprimand the licensee; place the licensee on probationary status subject to reasonable terms of probation; deny, suspend, or revoke a license. In addition, if the respondent is found by the board to have committed any of the acts set out in this section for which discipline may be imposed, the board may tax costs and disbursements against the respondent as in civil actions; and may further impose a penalty fee if the respondent is found by the board to have committed any of the acts set out in subsections 1 through 4 of section 43-12.1-15 or subsection 7 of this section. Any fee, costs, and disbursements imposed by the board against the respondent may be paid within a reasonable time and through reasonable periodic payments as specified in the board's order. Any penalty fee imposed may not exceed five dollars for each day or fraction of a day in which the respondent is found by the board to have committed any of the prohibited acts as set out herein; and may not exceed a total of one thousand dollars. A suspended license may be reinstated at any time by the board. A revoked license may be reissued after one year at the board's discretion. An appeal from the final decision of the board may be taken to the district court of Burleigh County in accordance with the provisions of chapter 28-32. The board shall furnish to the boards of nursing of other states, and to health agencies of this state, a list of the names and addresses of licensees who have been disciplined by the board. may suspend, revoke, place on probation, refuse to issue or renew a license, or reprimand a licensee or registrant if the licensee or registrant:

1. Has been arrested, charged, or convicted by a court, or has entered a plea of nolo contendere to a crime in any jurisdiction that relates

adversely to the practice of nursing and the licensee or registrant has not demonstrated sufficient rehabilitation under section 12.1-33-02.1;

2. Has been disciplined by a board of nursing in another jurisdiction, or has had a license to practice nursing or to practice in another health care occupation or profession denied, revoked, suspended, or otherwise restricted;
3. Has engaged in any practice inconsistent with the standards of nursing practice;
4. Has obtained or attempted to obtain by fraud or deceit a license or registration to practice nursing, or has submitted to the board any information that is fraudulent, deceitful, or false;
5. Is unfit or incompetent to practice nursing by reason of negligence, patterns of behavior, or other causes as established under rules adopted by the board;
6. Has diverted or attempted to divert drugs or controlled substances for unauthorized use;
7. Has practiced nursing in this state without a current license or as otherwise prohibited by this chapter;
8. Has failed to report any violation of this chapter or rules adopted under this chapter; or
9. Has failed to meet the duties of a licensee or registrant under this chapter.

**SECTION 15. AMENDMENT.** Section 43-12.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-15. Violation - Penalties.** ~~No A person or persons~~ may not:

1. Buy or sell, fraudulently obtain, or furnish any questions and answers used in the licensing examination for nurses, or assist others in the performance of these acts.
2. Buy or sell, fraudulently obtain, or furnish any record which might enable a person to obtain a license in this state or assist others in the performance of these acts.
3. Practice as an advanced practice registered nurse, a registered nurse, or a licensed practical nurse ~~as defined in this chapter under cover or through use of~~ a transcript from a school of nursing, diploma, certificate of registration, license, or record which was fraudulently created or obtained.
4. Practice as an advanced practice registered nurse, a registered nurse, or a licensed practical nurse as defined by this chapter unless ~~duly~~ licensed to do so.
5. Conduct a nursing any education program for the preparation of registered nurses or licensed practical nurses preparing a person for

nursing licensure or registration unless the program has been approved or accepted by the board.

6. Employ a person to practice nursing or perform nursing or nursing-related functions or tasks unless the person is authorized licensed or registered by the board to perform these functions or tasks.

Any violation of this ~~section~~ chapter is a class B misdemeanor.

**SECTION 16. AMENDMENT.** Section 43-17-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02. Persons exempt from the provisions of chapter.** The provisions of this chapter do not apply to the following:

1. Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education.
2. Any physician residing on the border of a neighboring state and duly licensed under the laws thereof, who does not open an office or appoint a place to meet patients or to receive calls within this state.
3. The domestic administration of family remedies.
4. Dentists practicing their profession when properly licensed.
5. Optometrists practicing their profession when properly licensed.
6. The practice of Christian Science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if he does not hold himself out to be a physician or surgeon.
7. Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
8. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
9. Podiatrists practicing their profession when properly licensed.
10. Any person rendering services as a physician's trained assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners shall prescribe rules and regulations governing the conduct, activities, and supervision of physicians' trained assistants. Physicians'



trained assistants may not be authorized to perform any services which must be performed by persons licensed pursuant to chapters ~~43-12~~ 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

11. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.

**SECTION 17. REPEAL.** Sections 43-12-26.1, 43-12-27, 43-12.1-08.1, 43-12.1-13.1, 43-12.1-13.2, and 43-12.1-14.1 of the North Dakota Century Code are repealed.

**SECTION 18. TRANSITION.** Rights and duties that have matured, penalties that were incurred, and proceedings that were commenced before the effective date of this Act remain valid under the law in effect at the time of the occurrence. Any person holding a license or registration to practice nursing that is valid on the effective date of this Act is deemed to be licensed or registered under the provisions of this Act and is eligible for renewal of the license or registration under the conditions and standards prescribed in this Act. Any person holding a lapsed license or registration on the effective date of this Act may become licensed or registered by applying for reinstatement according to the standards prescribed in this Act.

**SECTION 19. JOINT RULEMAKING COMMITTEE.** A joint rulemaking committee consisting of three members of the board of nursing and three members of the board of medical examiners shall develop rules governing the prescriptive practice described in subdivision b of subsection 6 of section 43-12.1-08. The board of nursing shall implement the rules.

**SECTION 20. EXPIRATION DATE.** Subsection 9 of section 5 and section 19 of this Act are effective through July 31, 1997, and after that date are ineffective.

Approved April 6, 1995  
Filed April 6, 1995

**CHAPTER 404****SENATE BILL NO. 2239**

(Senators Traynor, DeMers, Krebsbach)  
(Representatives Kunkel, Rydell)

**NURSE PRACTICES ACT EXEMPTIONS**

AN ACT to amend and reenact section 43-12.1-04 of the North Dakota Century Code, relating to persons exempt from the provisions of the Nurse Practices Act.

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

<sup>200</sup> **SECTION 1. AMENDMENT.** Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-04. Persons exempt from provisions of chapter.** This chapter does not apply to:

1. Persons who ~~give nursing assistance~~ perform nursing tasks in cases of emergency or disaster.
2. Students practicing nursing as a part of a board-approved nursing education program.
3. Legally licensed nurses of another state ~~who are~~ employed in this state by the United States government or ~~a bureau, division, or agency thereof~~ any of its bureaus, divisions, or agencies.
4. ~~Legally licensed nurses of~~ A nurse licensed by another state or Canada, whose employment requires ~~them~~ the nurse to accompany and care for a patient who is in transit for ~~medical treatment~~ health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
- ~~6.~~ 7. A person who ~~provides nursing care or performs nursing functions or nursing tasks for an immediate~~ a family member.
- ~~6.~~ 7. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under this title and carrying out the therapy or practice for which the person is licensed or registered.

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<sup>200</sup> Section 43-12.1-04 was also amended by section 5 of Senate Bill No. 2192, chapter 403.

9. A person who is not licensed under this chapter and who provides medication administration according to individual needs and as part of an individual habilitation or case plan:
- a. Within a developmental disabilities provider agency licensed pursuant to chapter 25-16;
  - b. Within a foster care provider agency licensed pursuant to chapter 50-11; or
  - c. Through, or under contract with, a human service center licensed pursuant to chapter 50-06.

A licensed nurse may delegate medication administration to a person exempt under this section.

Approved April 5, 1995

Filed April 6, 1995

## CHAPTER 405

### SENATE BILL NO. 2163

(Industry, Business and Labor Committee)

(At the request of the Board of Pharmacy)

## PHARMACY TECHNICIANS

AN ACT to create and enact a new subsection to section 43-15-01 and a new subsection to section 43-15-10 of the North Dakota Century Code, relating to definitions applicable to pharmacists and the powers of the board of pharmacy; and to amend and reenact section 43-15-14 of the North Dakota Century Code, relating to the unlawful practice of pharmacy.

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

<sup>201</sup> SECTION 1. A new subsection to section 43-15-01 of the North Dakota Century Code is created and enacted as follows:

"Pharmacy technician" means a person registered by the board who is employed by a pharmacy to assist licensed pharmacists in the practice of pharmacy by performing specific tasks delegated by and under the immediate personal supervision and control of a licensed pharmacist, as permitted by the board.

<sup>202</sup> SECTION 2. A new subsection to section 43-15-10 of the North Dakota Century Code is created and enacted as follows:

To adopt, amend, and repeal rules as may be deemed necessary by the board to register pharmacy technicians pursuant to qualifications established by the board, to charge a pharmacy technician an annual registration fee not to exceed fifty dollars, to specify tasks associated with and included in the practice of pharmacy which may be delegated by a licensed pharmacist to a registered pharmacy technician, to provide for suspension or revocation of a pharmacy technician's registration, and to regulate and control pharmacy technicians. The board may, in its discretion, allocate up to fifty percent of the amount of the registration fee to an appropriate pharmacy technician association for its general operating expenses, including pharmacy technician education and development standards.

SECTION 3. AMENDMENT. Section 43-15-14 of the North Dakota Century Code is amended and reenacted as follows:

43-15-14. Unlawful practice of pharmacy.

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<sup>201</sup> Section 43-15-01 was also amended by section 1 of Senate Bill No. 2212, chapter 406.

<sup>202</sup> Section 43-15-10 was also amended by section 4 of House Bill No. 1403, chapter 217, and section 2 of House Bill No. 1058, chapter 243.

1. Applicability. No person may engage in the practice of pharmacy unless licensed to practice pharmacy under this chapter, except that a registered pharmacy technician may perform specific tasks delegated by and under the immediate personal supervision and control of a licensed pharmacist, as permitted under rules adopted by the board. Physicians or other practitioners as defined in this chapter who are licensed under the laws of this state may dispense and administer prescription drugs to their patients in the practice of their respective professions if specifically authorized to do so by state law.
2. Penalties. Any person who is found by the board to have unlawfully engaged in the practice of pharmacy is subject to a fine to be imposed by the board not to exceed one thousand dollars for each offense. Each violation of this chapter or the rules adopted under this chapter pertaining to unlawfully engaging in the practice of pharmacy also constitutes a class B misdemeanor.
3. A pharmacy or licensed pharmacist that utilizes the services of a registered pharmacy technician as permitted by the board, may not be considered as aiding and abetting an unauthorized person to practice pharmacy; provided, however, that the pharmacy or licensed pharmacist must retain responsibility for any act performed by a registered pharmacy technician in the course of the registered pharmacy technician's employment.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 406****SENATE BILL NO. 2212**

(Industry, Business and Labor Committee)

(At the request of the Board of Pharmacy)

**PHARMACY PRACTICE DEFINITION**

AN ACT to amend and reenact subsection 22 of section 43-15-01 of the North Dakota Century Code, relating to the definition of practice of pharmacy.

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

<sup>203</sup> **SECTION 1. AMENDMENT.** Subsection 22 of section 43-15-01 of the North Dakota Century Code is amended and reenacted as follows:

22. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, drug administration, drug regimen review, the provision of these acts or services necessary to ~~provide pharmaceutical care~~ as a primary health care provider of pharmaceutical care, and drug utilization evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising, consulting, and educating where necessary or where regulated, patients, public, and other health care providers on the rational, safe, and cost-effective use of drugs including therapeutic values, content, hazards, and appropriate use of drugs and devices; the participation in interpreting and applying pharmacokinetic data and other pertinent laboratory data to design safe and effective drug dosage regimens; where appropriate and where regulated, the participation in drug research either scientific or clinical as investigator or in collaboration with other investigators for the purposes of studying the effects of drugs on animals or human subjects, with other drugs or chemicals, and with drug delivery devices; emergency pharmacy practice; prescriptive practices as limited herein; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

Approved April 4, 1995

Filed April 4, 1995

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<sup>203</sup> Section 43-15-01 was also amended by section 1 of Senate Bill No. 2163, chapter 405.

## **CHAPTER 407**

### **SENATE BILL NO. 2213**

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

## **PHARMACY TEACHING BY BOARD MEMBERS**

AN ACT to repeal section 43-15-13 of the North Dakota Century Code, relating to the teaching of pharmacy by members of the state board of pharmacy.

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

**SECTION 1. REPEAL.** Section 43-15-13 of the North Dakota Century Code is repealed.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 408****SENATE BILL NO. 2438**

(Senators Thane, Krauter, Wanzek)  
(Representatives Boucher, Price, Stenehjem)

**PHARMACIST LIMITED PRESCRIPTIVE PRACTICES**

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to limited prescriptive practices by licensed pharmacists.

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

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

**Limited prescriptive practices.**

1. A licensed pharmacist in an institutional setting has limited prescriptive practices to initiate or modify drug therapy following diagnosis and initial patient assessment by a licensed physician, under the supervision of the same licensed physician, in accordance with this section. An institutional setting, for the purpose of this section, is a hospital, a skilled nursing facility, or a swing bed facility in which a patient's medical records are readily available to the licensed physician and the licensed pharmacist.
2. The licensed physician and the licensed pharmacist shall prepare a collaborative agreement concerning the scope of the pharmacist's prescriptive practices and shall update the agreement at least every two years or when they modify the scope of the pharmacist's prescriptive practices. The collaborative agreement, or an amendment to the agreement, is effective when approved by the board of medical examiners and the board of pharmacy.
3. The agreement must include a provision that requires the licensed pharmacist to immediately notify the licensed physician when the licensed pharmacist initiates or modifies a drug therapy.
4. The board of medical examiners and the board of pharmacy shall jointly establish a prescriptive practices committee consisting of two physicians appointed by the board of medical examiners, one physician appointed by the North Dakota medical association, one pharmacist appointed by the board of pharmacy, and one pharmacist appointed by the North Dakota pharmaceutical association. The prescriptive practices committee shall develop and submit proposed rules concerning the implementation of this section to the board of medical examiners and the board of pharmacy. Any rules to implement this section must be jointly adopted by the board of medical examiners and the board of pharmacy.

Approved April 3, 1995  
Filed April 3, 1995



## CHAPTER 409

## HOUSE BILL NO. 1256

(Representatives Keiser, Kelsch)

## DENTAL HYGIENISTS AND DENTISTRY PRACTICE

AN ACT to amend and reenact sections 43-20-03, 43-20-07, 43-20-12, 43-20-12.1, subsection 6 of section 43-28-01, subsections 1 and 3 of section 43-28-04, section 43-28-05, subsection 5 of section 43-28-06, sections 43-28-11, 43-28-12.2, subsections 1 and 2 of section 43-28-15, sections 43-28-19, and 43-28-23 of the North Dakota Century Code, relating to dental hygienists and the practice of dentistry; to direct the board of dental examiners and the board of medical examiners to study the licensing and practice of oral and maxillofacial and related surgical procedures; to provide an effective date and an expiration date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-03. Dental hygienists - Practice by.** As used in this chapter, "dental hygiene" and the practice thereof means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth if such acts are performed under the direct ~~or~~, modified general, or general supervision of a licensed dentist. General supervision may be utilized only if the following conditions are met:

1. The patient is a patient of record who has been examined by the dentist within the past twelve months;
2. The patient is being treated at the primary practice location of the supervising dentist, a public health setting, a hospital, a long-term care facility, or in an institutional type setting;
3. A current treatment plan is in place; and
4. Any delegated procedure is preauthorized by the supervising dentist.

Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the board of dental examiners by appropriate rules.

**SECTION 2. AMENDMENT.** Section 43-20-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-07. Licensure by credential review.** Any dental hygienist who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, who has been ~~duly~~ licensed for at least three years to practice dental hygiene in another ~~and who has been actively practicing dental hygiene for at least three years~~

prior to the application to practice in this state, who is of good moral character and desirous of removing to this state, ~~and who deposits with the board of dental examiners a license from the examining board of the state in which the dental hygienist is licensed, certifying to the fact of being licensed, and a letter from the secretary of the state dental association; or the secretary of the state dental hygienists association or organization; of that state, certifying that the dental hygienist is of who provides reference letters from three dentists attesting to the dental hygienist's clinical competence,~~ good moral character, and professional ~~attainments~~ attainment, may upon the payment of the fee determined by the board, in the discretion of the board, and upon the satisfactory passing of such examinations as the board deems necessary and proper, be granted a license to practice in this state. ~~The board may dispense with examining an applicant if the state in which the applicant was previously licensed has a reciprocal agreement with this state.~~

**SECTION 3. AMENDMENT.** Section 43-20-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-12. Dental hygienist - Dental assistant - Scope of permitted practice.**

1. A licensed dentist may delegate to a competent dental hygienist or dental assistant those procedures over which the dentist exercises full responsibility, except those procedures that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. A dental hygienist or dental assistant may take impressions for athletic mouthguards and for passive posttreatment orthodontic retainers that do not replace missing teeth. A dental hygienist may prepare oral hygiene treatment plans to be approved by the supervising dentist.
2. ~~Except as provided in this subsection, dental hygienists may perform delegated procedures only under direct or modified general supervision of a dentist licensed in this state. The board of dental examiners may, where the board finds it appropriate, authorize the performance of delegated procedures under indirect or general supervision in hospitals, long-term care facilities, and state institutions upon application by a dentist licensed in this state. Any authority granted under this subsection is valid for one year, and upon application by a licensed dentist for renewal of the authority, must be reviewed in full by the board prior to the granting of renewal of the authority.~~
3. A dental assistant may perform such delegated procedures over which a dentist exercises direct supervision as are established by rules adopted by the state board of dental examiners.

**SECTION 4. AMENDMENT.** Section 43-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-12.1. Continuing educational requirement for dental hygienists.** Upon the fifth anniversary of the issuance of a license to practice dental hygiene and each five years thereafter, each person licensed to practice dental hygiene in this state shall provide the state board of dental examiners evidence, of a nature suitable to the board, that the licensed person has attended, or participated in the amount of continuing education in dental hygiene as is required by the board. The minimum

requirement may not be less than forty hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other evidence of continuing education approved by the board.

Any licensed person who fails to comply with this requirement ~~must~~ may, at the discretion of the board, be reexamined to determine the person's competency to continue licensure. If, in the opinion of the board, the licensed person does not qualify for further licensed practice, the board shall suspend the license until the dental hygienist provides acceptable evidence to the board of the hygienist's competency to practice.

**SECTION 5. AMENDMENT.** Subsection 6 of section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

6. For the purposes of this chapter, the term "practice of dentistry" ~~means and~~ includes examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae and soft tissues, and the diagnosis, ~~the~~ surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

**SECTION 6. AMENDMENT.** Subsection 6 of section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

6. For the purposes of this chapter, the term "practice of dentistry" ~~means and~~ includes examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae and soft tissues, and the diagnosis, ~~the~~ surgical, and adjunctive treatment of the diseases, injuries, and defects of the human jaw and associated structures. However, no dentist licensed in this state may perform oral maxillofacial surgery unless the licensee also is certified or board-eligible for certification by the American board of oral and maxillofacial surgeons.

**SECTION 7. AMENDMENT.** Subsections 1 and 3 of section 43-28-04 of the North Dakota Century Code are amended and reenacted as follows:

1. A person may not be appointed as a dentist member of the board unless that person:
  - a. Is a ~~duly~~ licensed and registered dentist in accordance with chapter 43-28.
  - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.

3. A person may not be appointed as the consumer member of the board unless that person:
  - a. Has been a resident of North Dakota for five years immediately preceding appointment.
  - b. Has no personal or family financial relationship with the dental profession.
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of a person engaged in any of those occupations.

**SECTION 8. AMENDMENT.** Section 43-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum.** The board shall hold a regular annual meeting, at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation the sum of ninety dollars for each day actually engaged in the duties of the office and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The secretary-treasurer ~~must~~ may be paid an annual salary equal to fifteen percent of all funds received in an amount determined by the board ~~during the year~~. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

**SECTION 9. AMENDMENT.** Subsection 5 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

5. Employ and compensate an executive director, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter.

**SECTION 10. AMENDMENT.** Section 43-28-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-11. Examination required - Application - Qualifications - Fees.** Any person who desires to obtain a license to practice dentistry in this state shall apply to the ~~secretary-treasurer~~ executive director of the board on forms prescribed by the board and shall submit to an examination by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true of applicant's own knowledge, and must be received by the ~~secretary-treasurer~~ executive director of the board at least thirty days before the date of the examination. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board. Additional costs of regional or other state's examinations as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant shall show proof that the applicant:

1. Is a graduate of a dental college recognized by the board.
2. Is a person of good moral character.

**SECTION 11. AMENDMENT.** Section 43-28-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-12.2. Continuing educational requirement for dentists.** Upon the fifth anniversary of the issuance of a license to practice dentistry and each five years thereafter, each person licensed to practice dentistry in this state shall provide the board evidence, of a nature suitable to the board, that the licensed person has attended, or participated in the amount of continuing education in dentistry required by the board. The minimum requirement may not be less than ~~seventy~~ eighty hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other evidence of continuing education approved by the board.

Any licensed dentist who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the dentist's competency to continue licensure. If, in the opinion of the board, the licensed dentist does not qualify for further licensed practice, the board shall suspend the license until the dentist provides acceptable evidence to the board of the dentist's competency to practice.

**SECTION 12. AMENDMENT.** Subsections 1 and 2 of section 43-28-15 of the North Dakota Century Code are amended and reenacted as follows:

1. Has been licensed and has been actively practicing dentistry for at least five years immediately preceding application to practice dentistry in another state where the requirements are at least equivalent to those of this state; ~~and where like provisions are accorded to holders of certificates of registration issued in this state.~~
2. Is a reputable, competent dentist of good moral character as evidenced by reference letters from three licensed dentists attesting to clinical competence, professional attainment, and good moral character.

**SECTION 13. AMENDMENT.** Section 43-28-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-19. Revocation of license and certificate - Proceedings, how initiated - Service of notice and hearing.** Proceedings for the suspension or revocation of a license and certificate of registration to practice dentistry in this state may be initiated:

1. Upon the complaint of any member of the board; or
2. Upon the complaint of another person.

The complaint must be in writing and verified under oath by the complainant, either upon personal knowledge or upon information and belief. Three copies thereof must be filed with the ~~secretary-treasurer~~ executive director of the board, whereupon the board, if it deems the complaint sufficient, shall issue its order setting a date and place for the hearing thereof on the merits. The ~~secretary-treasurer~~ executive

director of the board shall cause a copy of the complaint and order for hearing to be served upon the accused, either personally or by certified mail, such service must be made at least twenty days before the day set forth for hearing thereon.

**SECTION 14. AMENDMENT.** Section 43-28-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-23. Notice to board of change of address.** Within thirty days after a licensed and registered dentist changes the dentist's place of business, the dentist shall notify the ~~secretary-treasurer~~ executive director of the board of the new address. The notice must be given by certified mail and return receipt requested. Such licensed and registered dentist may not practice dentistry in the state for more than thirty days after such removal without giving such notice.

**SECTION 15. STUDY OF LICENSING ORAL AND MAXILLOFACIAL PROCEDURES.** During the 1995-96 legislative interim, the board of dental examiners and the board of medical examiners shall study the licensing and practice of oral and maxillofacial and related surgical procedures and present any recommendations to the fifty-fifth legislative assembly.

**SECTION 16. EFFECTIVE DATE - EXPIRATION DATE.** Section 6 of this Act expires on July 31, 1997. Section 5 of this Act becomes effective on August 1, 1997.

**SECTION 17. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 1995  
Filed April 21, 1995

## CHAPTER 410

## HOUSE BILL NO. 1172

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Commission)

REAL ESTATE COMMISSION JURISDICTION OVER  
MORTGAGE BROKERS ELIMINATED

AN ACT to amend and reenact sections 13-04.1-02, 43-23-05, 43-23-06.1, 43-23-07, subsection 1 of section 43-23-08, sections 43-23-09, 43-23-10, 43-23-12, 43-23-13, and 43-23-13.1 of the North Dakota Century Code, relating to the definition of money broker and mortgage broker exceptions; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 13-04.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-02. Money broker license required.** Except as otherwise herein provided, no person other than a money broker licensed and authorized under this chapter may advertise or solicit either in print, by letter, in person, or otherwise in North Dakota, the right to find lenders or provide loans for persons or businesses desirous of obtaining funds for any purposes. As used in this chapter, the term "money broker" does not include banks, credit unions, savings and loan associations, insurance companies, small loan companies, consumer finance companies, state or federal agencies and their employees, institutions chartered by the farm credit administration, trust companies, or any other person or business regulated and licensed by the state of North Dakota. The term "money broker" also does not include a real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson.

SECTION 2. AMENDMENT. Section 43-23-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-05. Real estate license required.** No person may act as a real estate broker; or real estate salesperson, ~~or mortgage broker~~ or advertise or assume to act as such real estate broker; or real estate salesperson, ~~or mortgage broker~~ without a license issued by the real estate commission. No person is entitled to collect any fees, compensation, or commission as a real estate broker; or real estate salesperson; ~~or mortgage broker~~ without having first complied with the provisions of this chapter. No copartnership, association, corporation, or limited liability company may be granted a license, unless at least one partner, shareholder, member, manager, or officer of the copartnership, association, corporation, or limited liability company, actually engaged as a real estate broker; or real estate salesperson; ~~or mortgage broker~~ as defined herein, holds a license as a real estate broker, and unless every employee who acts as a real estate salesperson ~~or mortgage broker~~ for such copartnership, association, corporation, or limited liability company holds a license as a real estate salesperson ~~or mortgage broker~~.

<sup>204</sup> SECTION 3. AMENDMENT. Section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-06.1. Definitions. When used in this chapter, the following definitions shall have the following meanings except where the context clearly indicates that another meaning is intended:

1. "Commission" means the North Dakota real estate commission.
2. "Mortgage broker" means any person, firm, partnership, trust, copartnership, association, cooperative, corporation, limited liability company, or other firm or entity, foreign or domestic, other than a licensed real estate broker, bank or trust company, savings and loan association, insurance company, federal land bank, or state or federal agency and their employees, who for a fee, commission, salary, or other consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of mortgages upon real estate for others, as a whole or partial vocation. The term "mortgages" as used in this chapter shall exclude any leasehold interests. "Mortgage broker" does not include persons loaning their own funds.
3. "Person" means and includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.
- 4+ 3. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
- 5+ 4. "Real estate broker", or "broker", means any person who, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
  - a. Lists, offers, attempts or agrees to list real estate or any interest therein, or any improvements affixed thereon for sale, exchange, or lease.
  - b. Sells, exchanges, purchases, or leases real estate or any interest therein, or any improvements affixed thereon.
  - c. Offers to sell, exchange, purchase, or lease real estate or any interest therein, or any improvements affixed thereon.

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<sup>204</sup> Section 43-23-06.1 was also amended by section 2 of Senate Bill No. 2520, chapter 411.



- d. Negotiates, or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest therein, or any improvements affixed thereon.
- e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest therein, or any improvements thereon.
- f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in his own behalf.
- g. Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest therein, or any improvements thereon.
- h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest therein, or any improvements thereon.

6+ 5. "Real estate salesperson" means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 5 4 for or on behalf of such licensed real estate broker.

**SECTION 4. AMENDMENT.** Section 43-23-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-07. Real estate brokers, and salespersons, ~~or mortgage brokers~~ - Exceptions.** The term "real estate broker"; or "real estate salesperson"; ~~or "mortgage broker"~~ does not include:

1. Any person, partnership, association, corporation, or limited liability company who is a bona fide owner or lessor or who accepts or markets leasehold interests in residential or agricultural property and performs any of the aforesaid acts with reference to property owned or leased by them, nor does it apply to regular employees thereof, where the acts are performed in the regular course of or as an incident to the management of the property and the investment therein.
2. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in district court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
3. Any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.
4. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of the bank or trust company.
5. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the

sale, purchase, lease, or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.

6. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
7. Public officers while performing their duties.

**SECTION 5. AMENDMENT.** Subsection 1 of section 43-23-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Licenses and the renewals thereof may be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of a real estate broker; or a real estate salesperson; ~~or mortgage broker~~ in such manner as to safeguard the interest of the public, and whose real estate license ~~or mortgage broker license~~ has not been revoked in this or any other state within two years prior to date of application. To determine the competency of applicants, the commission shall prescribe and hold examinations at designated times and places.

**SECTION 6. AMENDMENT.** Section 43-23-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-09. License application.** Every application for a real estate broker's license; or a real estate salesperson's license; ~~or a mortgage broker's license~~ must be in writing upon blanks prepared by the commission and contain such data and information as the commission may require.

**SECTION 7. AMENDMENT.** Section 43-23-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-10. Nonresident brokers - Reciprocity - Consent to service.** A nonresident broker regularly engaged in the real estate business as a vocation; ~~or a mortgage broker regularly engaged in the mortgage business as a vocation;~~ and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, may not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker ~~or mortgage broker~~ by another state as satisfactorily qualifying him for license as a broker; provided, that the nonresident broker has qualified for license in his own state and also that the other state permits licenses to be issued to licensed brokers in this state. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in which a claim for relief may arise, in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on any member of the commission, or the secretary-treasurer, said consent stipulating and agreeing that such service of such process or pleading shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. The consent must be duly acknowledged. Any service of process or pleading must be by duplicate copies, one of which must be filed in the office of the commission and the other immediately forwarded by registered mail to the last known main office of the applicant whom said process or pleading is directed, and no default in any such proceedings or action may be taken except upon affidavit or certificate of the commission or the secretary-treasurer, that a copy of said process or pleading was

mailed to the defendant as herein required, and no judgment by default may be taken in any such action or proceeding until after thirty days from the date of mailing of such process or pleading to the nonresident defendant.

**SECTION 8. AMENDMENT.** Section 43-23-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-12. Broker's place of business - License of employed salesperson.**

1. Every person, partnership, association, corporation, or limited liability company licensed as a real estate broker ~~or mortgage broker~~ is required to have and maintain a definite place of business within this state, for the transaction of real estate ~~or mortgage broker~~ business. The certificate of registration as broker and the certificate of each real estate salesperson ~~or mortgage broker~~ employed by such broker must be prominently displayed in said office. The said place of business must be designated in the license, and no license issued under the authority of this chapter may authorize the licensee to transact business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before said removal or within ten days after said removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period. The broker's home may qualify as such place of business.
2. All licenses issued to real estate salespersons ~~or mortgage brokers~~ shall designate the employer of such salespersons ~~or brokers~~. Prompt notice in writing, within ten days, must be given to the commission by any real estate salesperson ~~or mortgage broker~~ of a change of employer, and of the name of the licensed broker into whose employ the salesperson ~~or broker~~ is about to enter, and a new license shall thereupon be issued by the commission to such salesperson ~~or broker~~ for the unexpired term of the original license, upon the return to the commission of the license previously issued. The change of employer or employment by any licensed real estate salesperson ~~or mortgage broker~~, without notice to the commission as aforesaid, shall automatically cancel that person's license. Upon termination of a real estate salesperson's ~~or broker's~~ employment, the broker employer shall forthwith return the salesperson's license ~~or mortgage broker's license~~ to the commission for cancellation. It is unlawful for any real estate salesperson ~~or mortgage broker~~ to perform any of the acts contemplated by this chapter either directly or indirectly after that person's employment has been terminated and license as a salesperson ~~or mortgage broker~~ has been returned for cancellation, until said license has been reissued by the commission.

<sup>205</sup> **SECTION 9. AMENDMENT.** Section 43-23-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-13. Fees.** Fees for real estate brokers; ~~mortgage brokers~~; and real estate salespersons are as follows:

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<sup>205</sup> Section 43-23-13 was also amended by section 1 of House Bill No. 1085, chapter 412.

1. A fee of fifty dollars must accompany an application for an individual's real estate broker's ~~or mortgage broker's~~ license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, limited liability company, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of fifty dollars.
3. For an individual's real estate salesperson's license and for each annual renewal of the license, a fee of forty dollars.
4. For each additional office or place of business, an annual fee of ten dollars.
5. For each change of office or place of business, a fee of ten dollars.
6. For each transfer of a real estate salesperson's license, a fee of ten dollars.
7. For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.
8. For each examination given to an applicant, before a license is issued, a fee in an amount equal to the actual costs of the examination and its administration.
9. For each change of name, a fee of ten dollars.

**SECTION 10. AMENDMENT.** Section 43-23-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-13.1. License renewal.** Every person licensed to practice as a real estate broker, ~~or~~ real estate salesperson, ~~or mortgage broker~~ must register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal must be accompanied by such certification as required by this chapter and rules ~~and regulations~~ of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and is to be submitted to the commission with the appropriate fee no later than December thirty-first of each year. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee may file a late renewal application, together with the required educational certification, before March first of the subsequent year and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof after January first. Any license not renewed by March first must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and who desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

No licensee may engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

**SECTION 11. EFFECTIVE DATE.** This Act becomes effective on December 1, 1995.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 411

## SENATE BILL NO. 2520

(Senators Watne, Lee)  
(Representatives Berg, Bernstein)

## REAL ESTATE BROKERAGE FIRM AGENTS

AN ACT to create and enact a new section to chapter 3-02 and three new sections to chapter 43-23 of the North Dakota Century Code, relating to duties required of a brokerage firm, common-law agency principles, misrepresentation of a real estate transaction, and appointed agents of a brokerage firm; and to amend and reenact section 43-23-06.1 of the North Dakota Century Code, relating to definitions for purposes of the state real estate commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 3-02 of the North Dakota Century Code is created and enacted as follows:

Limitation of duties of licensed real estate agents. The duties of real estate brokers and real estate salespersons, who are licensed under chapter 43-23, and the civil liabilities arising from the duties, are limited to those duties set forth in chapter 43-23 or under rules adopted under that chapter.

<sup>206</sup> SECTION 2. AMENDMENT. Section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

~~43-23-06.1. Definitions. When As used in this chapter, the following definitions shall have the following meanings except where unless the context clearly indicates that another meaning is intended otherwise requires:~~

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person who has entered into a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
5. "Dual agency" means a situation in which a real estate brokerage firm, or its licensees, owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:

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<sup>206</sup> Section 43-23-06.1 was also amended by section 3 of House Bill No. 1172, chapter 410.

- a. When one licensee represents both the buyer and the seller in a real estate transaction; or
- b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction.

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

- 2- 6. "Mortgage broker" means any person, firm, partnership, trust, copartnership, association, cooperative, corporation, limited liability company, or other firm or entity, foreign or domestic, other than a licensed real estate broker, bank or trust company, savings and loan association, insurance company, federal land bank, or state or federal agency and their employees, who for a fee, commission, salary, or other consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of mortgages upon real estate for others, as a whole or partial vocation. The term "mortgages" as used in this chapter ~~shall exclude~~ excludes any leasehold interests. "Mortgage broker" does not include persons loaning their own funds.
- 3- 7. "Person" ~~means and~~ includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.
- 4- 8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
- 5- 9. "Real estate broker", or "broker", means any person who, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
  - a. Lists, offers, attempts or agrees to list real estate or any interest therein, or any improvements affixed thereon for sale, exchange, or lease.
  - b. Sells, exchanges, purchases, or leases real estate or any interest therein, or any improvements affixed thereon.
  - c. Offers to sell, exchange, purchase, or lease real estate or any interest therein, or any improvements affixed thereon.
  - d. Negotiates, or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest therein, or any improvements affixed thereon.

- e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest therein, or any improvements thereon.
  - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in ~~his~~ the licensee's own behalf.
  - g. Advertises or holds ~~himself~~ oneself out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest therein, or any improvements thereon.
  - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest therein, or any improvements thereon.
10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.
- 6+ 11. "Real estate salesperson" means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 5 for or on behalf of such licensed real estate broker.

SECTION 3. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Real estate brokerage firm - Duties required. A real estate brokerage firm and its licensees, that provide services through a written agency agreement for a client, are bound to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, subject to the provisions of this chapter and subject to any rules adopted under this chapter. The agency may be a seller agent, a buyer agent, or a subagent, or, if a different relationship between the real estate brokerage firm and the person for whom the real estate brokerage firm performs the services is intended, including a dual agent, the relationship must be disclosed.

SECTION 4. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Duties supersede common law.

1. The duties of a real estate brokerage firm, and its licensees, as specified in this chapter or in rules adopted under this chapter, supersede any fiduciary duties of that real estate brokerage firm and its licensees, to a person based on common-law principles of agency to the extent that those common-law fiduciary duties are inconsistent with the duties specified in this chapter or in rules adopted under this chapter.
2. A client is not liable for a misrepresentation made by a licensee in connection with the licensee providing brokerage services for the client, including brokerage services provided under a subagency relationship, unless the client knows or should have known of the misrepresentation or the licensee is repeating a misrepresentation made by the client. This



subsection is intended to supersede any common-law duty of the client that is inconsistent with this subsection.

3. A real estate brokerage firm that is providing brokerage services to a client and which, through a subagency relationship, works with another real estate brokerage firm to provide brokerage services to that client is not liable for a misrepresentation made by the other real estate brokerage firm, unless the original brokerage firm knew or should have known of the other brokerage firm's misrepresentation or the other brokerage firm is repeating a misrepresentation made by the original brokerage firm.
4. This section does not limit the liability of a licensee under section 43-23-11.1 or of a client for substantial and willful misrepresentations made in reference to a real estate transaction.

SECTION 5. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Brokerage firm may appoint agents.

1. A real estate brokerage firm, through a designated broker, may appoint in writing to a client the licensee or licensees within the brokerage firm who will act as appointed agent of that client to the exclusion of all other licensees within the brokerage firm.
2. If a real estate brokerage firm appoints an appointed agent for clients of the agency who are, or may be, parties in the same real estate transaction, the brokerage firm and its licensees are not dual agents as to those clients, and there is no imputation of knowledge or information among or between said clients, the real estate brokerage firm, and the appointed agents.
3. Nothing in this section prevents a real estate brokerage firm from entering a dual agency relationship with its clients after complying with any disclosure requirements provided by this chapter or by rules adopted under this chapter.

Approved April 12, 1995

Filed April 13, 1995

**CHAPTER 412****HOUSE BILL NO. 1085**

(Finance and Taxation Committee)

(At the request of the North Dakota Real Estate Commission)

**REAL ESTATE PROFESSIONAL LICENSE FEES**

AN ACT to amend and reenact subsections 1, 2, and 3 of section 43-23-13 of the North Dakota Century Code, relating to real estate broker, mortgage broker, and real estate salesperson license fees.

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

<sup>207</sup> **SECTION 1. AMENDMENT.** Subsections 1, 2, and 3 of section 43-23-13 of the North Dakota Century Code are amended and reenacted as follows:

1. A fee of ~~forty~~ sixty dollars must accompany an application for an individual's real estate broker's or mortgage broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, limited liability company, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of ~~forty~~ sixty dollars.
3. For an individual's real estate salesperson's license and for each annual renewal of the license, a fee of ~~forty~~ fifty dollars.

Approved March 1, 1995

Filed March 1, 1995

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<sup>207</sup> Section 43-23-13 was also amended by section 9 of House Bill No. 1172, chapter 410.

## **CHAPTER 413**

### **HOUSE BILL NO. 1084**

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Commission)

## **REAL ESTATE COMMISSION INJUNCTIONS**

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to injunctive actions by the North Dakota real estate commission.

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

**SECTION 1.** A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

**Injunctions authorized to enforce law.** If any person or entity has engaged in any act or practice that constitutes or will constitute a violation of this chapter, the commission may commence an action in the district court of the county in which the person or entity resides or in the district court of the county in which the act or practice occurred for an injunction to enforce compliance with this chapter or rules adopted by the commission. The commission is not required to give any bond for commencing this action. Upon a showing that the person or entity has engaged in any act or practice in violation of this chapter or rules adopted by the commission, the district court may enjoin the act or practice and may make any order necessary to conserve, protect, and disburse any funds involved.

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 414****HOUSE BILL NO. 1326**

(Representatives Payne, Christopherson)

(Senator Grindberg)

**DENTIST OFFICE OWNERSHIP**

AN ACT to create and enact a new subsection to section 43-28-25 of the North Dakota Century Code, relating to the practice of dentistry.

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

**SECTION 1.** A new subsection to section 43-28-25 of the North Dakota Century Code is created and enacted as follows:

For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business where dental operations, dental oral surgery, or dental services are performed. This provision does not apply to medical clinics and public health settings where dentists are associated and the heir of a deceased dentist who may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of death.

Approved April 5, 1995

Filed April 5, 1995

## CHAPTER 415

## SENATE BILL NO. 2270

(Senators Freborg, C. Nelson, Sand)

(Representatives Boehm, Dalrymple)

## VETERINARY TECHNICIANS

AN ACT to create and enact five new sections to chapter 43-29 of the North Dakota Century Code, relating to licensure of veterinary technicians, veterinary technician services, and automatic licensure for certified veterinary technicians; and to amend and reenact section 43-29-09 and subsection 8 of section 43-29-13 of the North Dakota Century Code, relating to the adoption of rules by the board of veterinary medical examiners and persons not considered to be engaging in the practice of veterinary medicine.

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

SECTION 1. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

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

1. "Animal" means any animal other than a human being. The term includes a mammal, bird, fish, and reptile.
2. "Board" means the board of veterinary medical examiners.
3. "Licensed veterinarian" means a person who is licensed by the board to practice veterinary medicine.
4. "Licensed veterinary technician" means a person who has graduated from a veterinary technology program that is accredited according to the standards adopted by the American veterinary medical association's committee on veterinary technician education and activities, or an equivalent program as determined by the board, and who has passed an examination prescribed by the board.

SECTION 2. AMENDMENT. Section 43-29-09 of the North Dakota Century Code is amended and reenacted as follows:

43-29-09. Permit to practice issued by executive secretary of board - Limited specialty license - Graduate veterinary technicians. Any person who desires to practice veterinary medicine, surgery, or dentistry may apply to the executive secretary of the ~~state board of veterinary medical examiners~~ for a temporary permit to practice if the applicant possesses a degree or diploma showing the applicant to be a graduate of the veterinary course offered in a veterinary school, college, or university recognized by the board. Upon the payment of fifty dollars by the applicant, twenty-five dollars must be applied toward the examination fee; ~~but must be declared forfeit and is forfeited~~ if the applicant fails to appear at the next scheduled examination. No temporary permit may be issued to any applicant who has previously failed the examination. The executive secretary, if satisfied that the applicant is a qualified and a suitable person, and with the approval of the president of the board, shall issue a permit to practice until the next examination is offered by

the board. ~~Such~~ The permit has the same force as a certificate from the board, but expires upon the adjournment of the next meeting ~~thereof~~ of the board at which an examination is held.

Senior A senior veterinary ~~students~~ student who ~~practice~~ practices in the office of, and under the direct supervision of, a licensed veterinarian must obtain a temporary permit to practice veterinary medicine in this state. ~~This~~ A temporary student permit may not exceed four months from its date of issuance and ~~will be~~ is granted without payment of a fee.

The board may issue a limited specialty license for the practice of that specialty in this state to a veterinarian, licensed in another state, who has passed a nationally recognized specialty board exam and who otherwise meets the qualifications to practice in this state. All limited specialty licenses regardless of when issued, expire on June thirtieth of each year and may be renewed in the discretion of the board. All veterinarians holding a limited specialty license are subject to ~~the provisions of~~ this chapter during the term of the license. Fees for a limited specialty license are the same as ~~provided~~ for a regular license.

The board shall adopt rules for the training, certification, and limits of activity for veterinary assistants and shall adopt rules for the licensing, training, certification, and limits of activity for veterinary technicians being trained and employed under the direct supervision and responsibility of a licensed veterinarian. All veterinary technicians must be registered with and subject to requirements established by the board. ~~As used in this chapter, a veterinary technician is a paramedical person who has had further training of at least two years of preparation for veterinarian related employment in a position between the professional doctor and the animal attendant levels. A veterinary technician must be trained and knowledgeable in the care and handling of animals; the basic principles of normal and abnormal life processes; and the routine laboratory and clinical procedures. Primarily, the work of a veterinary technician must be to assist veterinarians; biological researchers; and other veterinary scientists.~~

**SECTION 3. AMENDMENT.** Subsection 8 of section 43-29-13 of the North Dakota Century Code is amended and reenacted as follows:

8. Those who render auxiliary or supporting assistance under the responsible supervision of a North Dakota licensed veterinarian, such as veterinary aids, nurses, laboratory technicians, ~~veterinary technicians~~, interns, or other employees of such licensed practitioners.

**SECTION 4.** A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Veterinary technicians - Examinations.

1. An applicant for licensure as a veterinary technician must have an examination date offered at least annually at a time, place, and date determined by the board at least ninety days before the scheduled examination.
2. An applicant for licensure as a veterinary technician must pass the veterinary technician national examination with a score of at least seventy percent.

3. An applicant for licensure as a veterinary technician who has successfully passed the veterinary technician national examination shall request that the applicant's examination scores be forwarded to the board by the professional examination service. An applicant is eligible for licensure upon meeting the licensure requirements set by the board.

SECTION 5. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Veterinary technician services - Emergency services - Prohibited services.

1. A veterinary technician may perform the following services under the direction, supervision, and control of a licensed veterinarian, provided the licensed veterinarian performs a daily physical examination of the animal being treated:
  - a. Venipuncture, including insertion of an indwelling catheter when required.
  - b. Catheterizing the urinary bladder.
  - c. Injection, including hypodermic injection and parenteral fluids, except when in conflict with a government regulation.
  - d. Immunization immediately after examination by a licensed veterinarian, except when in conflict with a government regulation.
  - e. Inducing, maintaining, and monitoring anesthesia under the direct supervision of the licensed veterinarian.
  - f. Exposing and developing radiographic film.
  - g. Collecting and administering whole blood or plasma to an animal.
  - h. Assisting in surgery as directed by the licensed veterinarian.
  - i. Taking electrocardiogram and electroencephalogram tracings.
  - j. Performing routine laboratory procedures, including hematology, serology, microbiology, cytology, chemistry, urinalysis, fecal analysis, and skin scrapings.
  - k. Administering colonic irrigations and wound dressings.
  - l. Operating ultrasonic and polishing instruments for dental prophylaxis.
  - m. Preparing animals for surgery, including clipping, scrubbing, and disinfecting an operative site.
  - n. Preparing medicants for dispensing to clients on the direct or written order of the licensed veterinarian.
  - o. Maintaining surgery, x-ray, and laboratory logs and pharmacy records.

2. Under emergency conditions, a veterinary technician may perform the following treatments:
  - a. Applying tourniquets and pressure bandages to control hemorrhage.
  - b. Administering pharmacological agents and parenteral fluids only after direct communication with a licensed veterinarian, if the veterinarian is present or enroute to the location of the distressed animal.
  - c. Performing resuscitative oxygen procedures.
  - d. Applying temporary splints or bandages to prevent further injury to bones or soft tissues.
  - e. Applying appropriate wound dressings and external supportive treatment in severe burn cases.
  - f. Providing external supportive treatment in heat prostration cases.
3. A veterinary technician may not perform the following services unless the veterinary technician is acting as a surgical assistant to a licensed veterinarian under this chapter:
  - a. Making a diagnosis.
  - b. Prescribing a treatment.
  - c. Performing surgery.

SECTION 6. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Veterinary technician - Renewal of license.

1. A license issued to a veterinary technician under this chapter expires on December thirty-first.
2. A veterinary technician shall submit renewal fees and current mailing address before December thirty-first on an application form provided and mailed to the licenseholder by the board.
3. A veterinary technician shall submit evidence of completion of required continuing education credits in the veterinary field during the calendar year in order to apply for a license renewal.
4. Failure to submit the appropriate license renewal fee every year results in forfeiture of all rights and privileges under this chapter and the veterinary technician may not perform veterinary technician services unless the veterinary technician pays a delinquency fee in addition to the license renewal fee.

SECTION 7. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:



Certified veterinary technicians - Automatic licensure. The board shall issue a veterinary technician license to a veterinary technician who is certified in this state on the effective date of this Act.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 416

## SENATE BILL NO. 2533

(Senators Kringstad, Yockim)

(Representative Stenehjem)

## HEARING AID DEALERS

AN ACT to amend and reenact section 43-33-04 and subsection 2 of section 43-33-15 of the North Dakota Century Code, relating to exceptions to the licensure requirement for hearing aid dealers and composition of the board of hearing instrument dispensers.

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

SECTION 1. AMENDMENT. Section 43-33-04 of the North Dakota Century Code is amended and reenacted as follows:

43-33-04. Persons and practices not affected. This chapter does not prevent any or restrict:

1. A person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if the person or organization employing that person does not sell hearing instruments.
2. A person employed as a hearing instrument dispenser by the federal government from engaging in the practice of fitting and dispensing hearing instruments if the person performs the practice solely within the confines or under the jurisdiction of the government of the United States.
3. Activities and services of a person pursuing a course of study leading to a graduate degree in audiology at a college or university if the activities or services are under the direct supervision of a licensed dispenser, constitute a part of a supervised course of study, and the person is designated an audiology intern or trainee or by another title clearly indicating the training status appropriate to the level of training.

SECTION 2. AMENDMENT. Subsection 2 of section 43-33-15 of the North Dakota Century Code is amended and reenacted as follows:

2. Members of the board must be residents of the state. The board consists of four hearing instrument dispensers who are not audiologists or otolaryngologists, one otolaryngologist, ~~two~~ three audiologists, and ~~one consumer~~ two consumers. Each hearing instrument dispenser on the board must be primarily engaged as a hearing instrument dispenser, must have at least five years of experience in this state, and must hold a valid license as a hearing instrument dispenser.

Approved March 28, 1995

Filed March 29, 1995

**CHAPTER 417****HOUSE BILL NO. 1137**

(Finance and Taxation Committee)

(At the request of the State Board of Examiners for Nursing Home Administrators)

**NURSING HOME ADMINISTRATOR LICENSE FEES**

AN ACT to amend and reenact section 43-34-05 of the North Dakota Century Code, relating to license fees for nursing home administrators.

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

**SECTION 1. AMENDMENT.** Section 43-34-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-34-05. License fees.** Each person licensed as a nursing home administrator is required to pay a license fee in an amount to be fixed by the board, which fee may not exceed one hundred fifty dollars per annum. ~~The license expires on the thirty-first day of December in the year of its issuance, and is renewable annually, on a calendar year basis, upon payment of the license fee.~~ Any licensee, or applicant for license, may take a special examination for the purpose of being eligible for reciprocity with other states, upon the payment of an additional fee to be established by the board for that purpose.

Approved March 6, 1995

Filed March 7, 1995

**CHAPTER 418****SENATE BILL NO. 2291**

(Senators Yockim, Nalewaja, Thane)  
(Representatives Gunter, Poolman)

**SOCIAL WORK LICENSING EXAMINATION**

AN ACT to amend and reenact section 43-41-05 of the North Dakota Century Code, relating to requirements necessary to practice social work.

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

**SECTION 1. AMENDMENT.** Section 43-41-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-41-05. Private practice of social work.** No person may engage in the private practice of social work unless that person:

1. Is licensed under this chapter as a licensed certified social worker.
2. Has had three years of post master's experience under the supervision of a licensed certified social worker or a social worker who is eligible for licensure as a licensed certified social worker.
3. Has passed the clinical examination or its equivalent offered by the board.
4. Is registered with the board as eligible for private practice under criteria as may be established by board rule.

Approved March 13, 1995

Filed March 13, 1995

**CHAPTER 419****HOUSE BILL NO. 1484**

(Representatives Kerzman, Austin, Gorman)  
(Senators Mushik, Nalewaja, Urlacher)

**SOCIAL WORK EXAMINERS BOARD DISCIPLINARY  
ACTIONS**

**AN ACT** to create and enact two new subsections to section 43-41-10 of the North Dakota Century Code, relating to disciplinary actions of the North Dakota board of social work examiners.

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

**SECTION 1.** Two new subsections to section 43-41-10 of the North Dakota Century Code are created and enacted as follows:

In order to pursue the investigation, the board may subpoena and examine witnesses and records, including client records, and copy, photograph, or take samples. The board may require a licensed social worker to give statements under oath and to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that an evaluation be secured. A written request from the board constitutes authorization to release information. All client records released to the board are confidential and not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Unless there is a client release on file allowing the release of information at the public hearing, all data and information, including client and juvenile records, acquired by the board in its investigation are confidential and closed to the public. All board meetings where client and juvenile testimony or records are taken or revised are confidential and closed to the public. If no client or juvenile testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

Approved March 21, 1995

Filed March 23, 1995

**CHAPTER 420****HOUSE BILL NO. 1183**

(Representatives Rydell, Poolman, Carlson)  
(Senators W. Stenehjem, Nalewaja, Heinrich)

**RESPIRATORY CARE PRACTITIONER LICENSURE**

AN ACT to amend and reenact sections 43-42-01, 43-42-02, 43-42-03, and subsection 2 of section 43-42-05 of the North Dakota Century Code, relating to respiratory care practitioners and licensure requirements of temporary respiratory care practitioners.

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

**SECTION 1. AMENDMENT.** Section 43-42-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-42-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the ~~North Dakota~~ state board of respiratory care ~~examining board~~.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the ~~American medical association's~~ committee on accreditation of allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education educational programs, or the committee's successor organization.
3. "Certification examination" means the examination for respiratory therapy technicians administered by the national board for respiratory care.
4. "Certified respiratory care practitioner" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory care practitioner.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.
6. "Registered respiratory care practitioner" means a person licensed by the board to practice respiratory care.
7. "Registry examination" means the examination for respiratory therapists administered by the national board for respiratory care.
8. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, and includes the use of medical gases, air and oxygen administering apparatuses,

environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, respiratory rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and mechanical airways, and insertion and maintenance of artificial airways. Respiratory care The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.

9. "Respiratory care assistant" means any person not licensed to practice respiratory care who assists, under the onsite direction or supervision of a registered respiratory care practitioner or a certified respiratory care practitioner, in the practice of respiratory care and who performs a limited scope of practice commensurate with the assistant's education and training.
10. "Respiratory therapy" means respiratory care.
10. "Temporary respiratory care practitioner" means any individual who is enrolled in or has successfully completed a bona fide respiratory care training program and is licensed by the board to practice respiratory care under the supervision or direction of either a physician, certified respiratory care practitioner, or registered respiratory care practitioner.

**SECTION 2. AMENDMENT.** Section 43-42-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-42-02. North Dakota State board of respiratory care examining board.**

1. There is created a North Dakota The state board of respiratory care examining board. The board is responsible for the enforcement and administration of this chapter and for the adoption of any rules necessary to govern the practice of respiratory care in this state.
2. The board consists of seven members appointed by the governor. Two members must be registered respiratory care practitioners and two members must be certified respiratory care practitioners, chosen from a list of four registered respiratory care practitioners and four certified respiratory care practitioners supplied to the governor by the North Dakota chapter of the ~~Dakota~~ society for respiratory therapy care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint two members to be representatives of the general public. Members are appointed for terms of three years; ~~except of those first appointed; two must be appointed for terms of one year; two must be appointed for terms of two years; and three must be appointed for terms of three years.~~ Each member holds office until the member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.
3. The board shall annually select a chairman from among its members. ~~It must~~ The board shall meet at least twice each year and ~~must~~ shall meet upon the call of the chairman.

4. The board shall consult with the North Dakota chapter of the Dakota society for respiratory ~~therapy~~ care before adopting any rules.

**SECTION 3. AMENDMENT.** Section 43-42-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-42-03. Respiratory care practitioner licensing - Fees.**

1. The board shall license as a registered respiratory care practitioner any applicant whom the board determines to be qualified to perform the duties of a registered respiratory care practitioner. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. ~~Any respiratory care practitioner who has been registered by the national board for respiratory care prior to July 1, 1985, must, upon application, be granted a license as a registered respiratory care practitioner.~~ The board shall establish fees not in excess of fifty dollars for the issuance and renewal of licenses a registered respiratory care practitioner license.
2. The board shall license as a certified respiratory care practitioner any applicant whom the board determines to be qualified to perform the duties of a certified respiratory care practitioner. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. ~~Any respiratory care practitioner who has been certified by the national board for respiratory care prior to July 1, 1985, must, upon application, be granted a license as a certified respiratory care practitioner.~~ The board shall establish fees not in excess of thirty-five dollars for the issuance and renewal of licenses a certified respiratory care practitioner license.
3. Upon receipt of evidence showing that a person was employed in the practice of respiratory care before July 1, 1985, and that the person does not meet the criteria established in either subsection 1 or 2, the board shall license a respiratory therapist to continue to practice as a registered respiratory care practitioner, and a respiratory therapy technician to continue to practice as a certified respiratory care practitioner, for a period that expires December 31, 1988. To qualify for renewal of the license that person shall, prior to the expiration of the initial license, pass a board-prescribed examination that demonstrates to the board's satisfaction that that person is qualified to perform the duties of a registered respiratory care practitioner or certified respiratory care practitioner. The board shall license as a temporary respiratory care practitioner any applicant whom the board determines to be qualified to perform duties as a temporary respiratory care practitioner. In making this determination, the board shall require evidence that the applicant is enrolled in or has successfully completed a bona fide respiratory care training program. The board shall establish fees not in excess of thirty-five dollars for the issuance and renewal of a temporary respiratory care practitioner license.
4. The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:



- a. Is not qualified or competent to perform the duties of a registered respiratory care practitioner ~~or, a certified respiratory care practitioner, or a temporary respiratory care practitioner.~~
  - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
  - c. Has been found guilty by the board of gross negligence as a registered respiratory care practitioner ~~or, certified respiratory care practitioner, or a temporary respiratory care practitioner.~~
  - d. Has engaged in conduct as a registered respiratory care practitioner ~~or, certified respiratory care practitioner, or a temporary respiratory care practitioner~~ which is unethical, unprofessional, or detrimental to the benefit of the public.
  - e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
  - f. Has been convicted of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
  - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
  - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
5. ~~Except as provided in subsection 3, licenses~~ Licenses issued under this chapter expire annually ~~on January thirty-first,~~ but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board.
  6. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

**SECTION 4. AMENDMENT.** Subsection 2 of section 43-42-05 of the North Dakota Century Code is amended and reenacted as follows:

2. A graduate of a bona fide respiratory care training program, who has applied for licensure under this chapter may practice respiratory care under the supervision or direction of a physician or a registered or certified respiratory care practitioner; provided, that the graduate holds a temporary respiratory care practitioner's license and is identified as a "graduate respiratory care practitioner applicant". ~~If an An~~ applicant ~~fails to pass shall take~~ one of the next three immediately available entry level certification or registry examinations following eligibility; ~~all privileges under this subsection cease; except, that if the applicant has enrolled in a remedial refresher respiratory care course approved by the board; then.~~ Failure to pass any examination that is taken results in termination of the privileges provided under this subsection continue until the results of the next available certification or registry examination are made public.

Approved March 21, 1995

Filed March 23, 1995

## CHAPTER 421

### SENATE BILL NO. 2406

(Senators DeMers, LaFountain, Nalewaja, Robinson)  
(Representatives Kunkel, Thoreson)

## COUNSELOR EXAMINER SPECIALTY LICENSES

AN ACT to create and enact a new section to chapter 43-47 of the North Dakota Century Code, relating to authority of the board of counselor examiners to issue specialty licenses for counselors; and to amend and reenact subsections 3 and 4 of section 43-47-01, section 43-47-04, subsections 1 and 6 of section 43-47-05, and subsections 1, 3, and 6 of section 43-47-06 of the North Dakota Century Code, relating to the counselors and licensed associate professional counselors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 43-47-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Counselor" means a person who has been granted either a professional counselor or associate professional counselor license by the board.
4. "Licensed associate professional counselor" means a person who has been granted an associate professional license by the board to offer and conduct counseling under the supervision of a licensed professional counselor or such other person meeting the requirements of supervising professional set by the board.

**SECTION 2. AMENDMENT.** Section 43-47-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-47-04. Representation to the public.** Only persons licensed under this chapter may use the title "professional counselor" or "associate professional counselor", or the abbreviations "LPC" or "LAPC". The license issued by the board must be prominently displayed at the principal place of business of the counselor.

**SECTION 3. AMENDMENT.** Subsections 1 and 6 of section 43-47-05 of the North Dakota Century Code are amended and reenacted as follows:

1. This chapter does not prevent any person licensed by the state from doing work within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a professional counselor or associate professional counselor.
6. This chapter does not prevent the employment of, or volunteering by, individuals in nonprofit agencies or community organizations if these persons do not hold themselves out to the public as professional counselors or associate professional counselors.

**SECTION 4. AMENDMENT.** Subsections 1, 3, and 6 of section 43-47-06 of the North Dakota Century Code are amended and reenacted as follows:

1. Except as otherwise provided in this chapter, no person may engage in counseling in this state unless that person is a licensed professional counselor or licensed associate professional counselor.
3. The board shall issue a license as a licensed associate professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes sufficient evidence to the board that the applicant:
  - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
  - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the standards of the profession of counseling; and
  - c. Has provided a written plan for supervised experience which meets the requirements adopted by the board.
6. An associate professional counselor initially licensed under this chapter may be licensed for no more than two years. The associate professional counselor's license may be extended beyond two years only upon recommendation of the associate professional counselor's supervisor and three other counselors, at least one of whom must be a professor from the associate professional counselor's training program.

**SECTION 5.** A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Board may establish specialty licenses. The board may provide a counselor specialty license to any licensed professional counselor who meets the standards established by the board for that particular specialty. The board shall adopt standards for specialty licenses equal to or greater than those established by the national board of certified counselors, which governs the standards for particular specialties. The board may not create a specialty license for which the scope of practice is defined under any other chapter in this title.

Approved April 3, 1995  
Filed April 3, 1995

# OFFICES AND OFFICERS

## CHAPTER 422

### SENATE BILL NO. 2111

(Appropriations Committee)

(At the request of the State Board of Higher Education)

## STATE AGENCY PROPERTY INVENTORIES

AN ACT to amend and reenact section 44-04-07 of the North Dakota Century Code, relating to property inventories by state agencies.

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

**SECTION 1. AMENDMENT.** Section 44-04-07 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-07. Inventory required.** The person in charge of any state department, industry, institution, board, association, or commission shall maintain, or cause to be maintained, a complete and current inventory record of all property of sufficient value and permanence as to render such inventory record practical. ~~On the first day of July of each~~ Each year such person shall make a complete inventory of all such property, and shall maintain such inventory, with his certificate thereto attached, as to the correctness of same, in the files and records of the department, industry, institution, board, association, or commission. Said inventory record must provide a comprehensive description of each item, together with manufacturer's serial number, or other means of positive identification, and must include statements of all property disposed of by any means whatsoever, including livestock and increase therefrom, and must be in such form and detail as may be prescribed by the department charged with the duty of auditing or examining such records.

Approved March 17, 1995

Filed March 20, 1995

**CHAPTER 423****SENATE BILL NO. 2383**

(Senator W. Stenehjem)

(Representative Delmore)

**GOVERNMENTAL BODY CONFLICTS OF INTERESTS**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to conflicts of interest in matters before a governmental body.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Conflict of interest law.** A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 424

## SENATE BILL NO. 2215

(Political Subdivisions Committee)

(At the request of the Secretary of State)

## NOTARY PUBLIC REQUIREMENTS

AN ACT to amend and reenact sections 44-06-02, 44-06-04, 44-06-11, and 44-06-13.1 of the North Dakota Century Code, relating to a notary public's change of address, bond, notarial seal, revocation of commission, and notarizing of a spouse's or notary's signature.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 44-06-02 of the North Dakota Century Code is amended and reenacted as follows:

**44-06-02. Commission - Record - Fee - Notice.** The secretary of state shall issue a commission to each notary public appointed by the secretary of state which must be posted by such notary in a conspicuous place in ~~his~~ the notary's office. The secretary of state shall collect twenty-five dollars for the issuance of such commission. Such sum must be paid into the state treasury and credited to the general fund. The secretary of state shall keep ~~in his office~~ a record of such appointments and the date of the expiration of the same, and shall notify each notary public by mail at least thirty days before the expiration of ~~his~~ the notary public's term of the date upon which ~~his~~ the notary public's commission will expire. Such notice must be addressed to such notary public at ~~his~~ the last known place of residence. Each notary public issued a commission shall notify the secretary of state by mail within thirty days of any change of address.

**SECTION 2. AMENDMENT.** Section 44-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**44-06-04. ~~Deposit~~ Filing of oath, bond, and impression of notarial seal.** Each notary public, before entering upon the duties of such office, shall ~~provide himself with~~ obtain an official seal bearing ~~his~~ the notary public's name and shall ~~deposit file~~ a legible impression of such seal; ~~together with his~~ and the notary public's oath and bond, in the office of the secretary of state.

**SECTION 3. AMENDMENT.** Section 44-06-11 of the North Dakota Century Code is amended and reenacted as follows:

**44-06-11. Revocation of notary commission - Notice.** In case the commission of any person appointed as a notary is ~~revoked~~ subject to a revocation action, the secretary of state shall give notice thereof by mail to such person immediately and to the clerk of the district court of the proper county, using the procedures of chapter 28-32. The notice may provide that the person may not perform any notarial acts during the pendency of the revocation proceeding.

**SECTION 4. AMENDMENT.** Section 44-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

44-06-13.1. Wrongfully notarizing document - Penalty. ~~Any~~ A notary public ~~who appends his official~~ may not notarize a signature to any on a document when ~~the parties thereto have not executed the if:~~

1. The document in his was not signed in the presence of the notary public.
2. The notary public or the spouse of the notary public is a party to the document.
3. The signature is that of the notary public or the spouse of the notary public.

A notary public who violates this section is guilty of an infraction and ~~his~~ the notary public's commission must be canceled by the secretary of state, who shall give written notice of such cancellation to the notary public.

Approved March 24, 1995

Filed March 27, 1995



## CHAPTER 425

### SENATE BILL NO. 2402

(Senators DeMers, Nalewaja)  
(Representatives Christenson, Gorman)

### RESIDENT BIDDER PREFERENCE

AN ACT to amend and reenact section 44-08-01 of the North Dakota Century Code, relating to preference to North Dakota resident bidders; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 44-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**44-08-01. Preference to North Dakota bidders, sellers, and contractors.**

1. The office of management and budget, ~~or any board, commission, city council, board of city commissioners, board of education, board of park commissioners, school board, or any other state entity, and the~~ governing body of any political subdivision of the state; ~~or of any state institution,~~ in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor. In specifying or purchasing goods, merchandise, supplies, or equipment to be purchased, ~~such the entity or~~ board may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, where the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit.
2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The state entity shall award the bid to the resident North Dakota bidder if the bid of the resident North Dakota bidder is equal to or less than the low bid of a nonresident bidder and the resident North Dakota bidder has an acceptable performance history and meets the minimum requirements specified in the bid solicitation.

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

Approved April 5, 1995  
Filed April 6, 1995

## CHAPTER 426

## HOUSE BILL NO. 1103

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

## STATE EMPLOYEE TRAVEL REIMBURSEMENT

AN ACT to amend and reenact section 44-08-04 of the North Dakota Century Code, relating to state employee travel reimbursement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>208</sup> SECTION 1. AMENDMENT. Section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

44-08-04. Expense account - Amount allowed - Verification.

1. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals which are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Upon approval of the claim, it must be paid as an allowance. Reimbursement is allowed only for overnight travel or other travel, away from the normal place of employment, for four hours or more. Verification of expenses by receipt is required only for lodging expenses.
2. Expenses for travel within the state must be reimbursed at the following rates for each quarter of any twenty-four-hour period:
  - 1- a. First quarter is from six a.m. to twelve noon and the sum ~~may not exceed~~ must be three dollars and fifty cents ~~in state. No First quarter~~ reimbursement may not be made if travel began after seven a.m.
  - 2- b. Second quarter is from twelve noon to six p.m. and the sum ~~may not exceed~~ must be five dollars ~~in state.~~

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<sup>208</sup> Section 44-08-04 was also amended by section 1 of House Bill No. 1245, chapter 427.

- 3- c. Third quarter is from six p.m. to twelve midnight and the sum ~~may not exceed must be~~ eight dollars and fifty cents ~~in state~~.
- 4- d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed thirty-five dollars plus any additional applicable state or local taxes.
5. ~~Provided, however, that the allowances provided by this section are not applicable unless the person concerned has been out of the headquarters or normal place of employment for four hours or overnight.~~
3. The allowance for out-of-state meals, within the continental United States, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees by the United States general services administration and must be allocated twenty percent to the first quarter, thirty percent to the second quarter, and fifty percent to the third quarter.

Verifications of claims may not be required for the first three quarters listed above and only a lodging receipt is required for the fourth quarter.

Such persons engaged in travel outside state boundaries shall receive actual lodging expenses. Verification by receipt for such out-of-state travel expense is required only for lodging expense claimed.

Those persons engaged in travel outside the continental United States shall receive reimbursement for meals at a rate not to exceed two times the regular out-of-state meal allowance with the exception of Canadian travel, which will be reimbursed at regular out-of-state meal allowance rates. Verification by receipt for such travel expense outside the continental United States is required only for the lodging expense claimed. For purposes of this section, "regular out-of-state meal allowance" means the per diem meals rate on that day as established for federal employees in nonhigh rate geographical areas by the United States general services administration.

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4. The allowance for meals in Canada, Alaska, and Hawaii may not exceed one and one-half times the current continental United States standard rate for federal employees established by the United States general services administration.
5. The allowance for meals outside the continental United States, Canada, Alaska, and Hawaii may not exceed two times the current continental United States standard rate for federal employees established by the United States general services administration.
6. The allowance for lodging outside the state must be the actual lodging expense.

7. A department, institution, or agency of this state may set a rate for such travel expenses outside the state less than those set forth in this section for any person or persons under his authority. Verification of any other type of expense not prescribed by this section must be as prescribed by the office of the budget except no receipt may be required for taxi or cab fares ~~up to and including the sum~~ of ten dollars ~~or less~~. The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations.

Approved March 14, 1995

Filed March 14, 1995

## CHAPTER 427

## HOUSE BILL NO. 1245

(Representatives Martinson, Rydell, K. Henegar, Keiser,  
Kelsch)  
(Senator Kringstad)

STATE EMPLOYEE AND LEGISLATOR EXPENSE  
REIMBURSEMENT

AN ACT to amend and reenact sections 44-08-04 and 54-06-09 of the North Dakota Century Code, relating to state officer and employee expense reimbursement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>209</sup> SECTION 1. AMENDMENT. Section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

**44-08-04. Expense account - Amount allowed - Verification.** Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals ~~which~~ that are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Upon approval of the claim, it must be paid as an allowance at the following rates for each quarter of any twenty-four-hour period:

1. First quarter is from six a.m. to twelve noon and the sum may not exceed ~~three~~ four dollars ~~and fifty cents~~ in state. No reimbursement may be made if travel began after seven a.m.
2. Second quarter is from twelve noon to six p.m. and the sum may not exceed ~~five~~ six dollars in state.
3. Third quarter is from six p.m. to twelve midnight and the sum may not exceed ~~eight~~ ten dollars ~~and fifty cents~~ in state.

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<sup>209</sup> Section 44-08-04 was also amended by section 1 of House Bill No. 1103, chapter 426.

4. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed thirty-five dollars plus any additional applicable state or local taxes on lodging.
5. Provided, however, that the allowances provided by this section are not applicable unless the person concerned has been out of the headquarters or normal place of employment for four hours or overnight.

The allowance for out-of-state meals, within the continental United States, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees by the United States general services administration and must be allocated twenty percent to the first quarter, thirty percent to the second quarter, and fifty percent to the third quarter.

Verifications of claims may not be required for the first three quarters listed above and only a lodging receipt is required for the fourth quarter.

Such persons engaged in travel outside state boundaries shall receive actual lodging expenses. Verification by receipt for such out-of-state travel expense is required only for lodging expense claimed.

Those persons engaged in travel outside the continental United States shall receive reimbursement for meals at a rate not to exceed two times the regular out-of-state meal allowance with the exception of Canadian travel, which will be reimbursed at regular out-of-state meal allowance rates. Verification by receipt for such travel expense outside the continental United States is required only for the lodging expense claimed. For purposes of this section, "regular out-of-state meal allowance" means the per diem meals rate on that day as established for federal employees in nonhigh rate geographical areas by the United States general services administration.

The head of any department, institution, or agency of this state may set a rate for such expenses less than those set forth in this section for any person or persons under ~~his~~ that person's authority. Verification of any other type of expense not prescribed by this section must be as prescribed by the office of the budget except no receipt may be required for taxi or cab fares up to and including the sum of ten dollars. The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations.

**SECTION 2. AMENDMENT.** Section 54-06-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-06-09. Mileage and travel expense of state officers and employees.** State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense the following amounts:

1. The sum of ~~twenty~~ twenty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle or twenty-seven cents per mile [1.61 kilometers] if the travel is by truck, the use of which is required by the employing subdivision, agency, bureau, board, or commission. The sum of thirty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily

traveled in the performance of official duty when such travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:

- a. If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per-mile basis as provided in this subsection.
- b. If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

No reimbursement may be paid for leased private aircraft, except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use. If only one person shall engage in such travel in a motor vehicle exceeding at any geographical point one hundred fifty miles [241.40 kilometers] beyond the borders of this state, reimbursement must be limited to eighteen cents per mile [1.61 kilometers] for the out-of-state portion of the travel beyond the first one hundred fifty miles [241.40 kilometers]. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision thereof, no allowance may be made or paid for such mileage.

2. Except as provided in subsection 1, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.
3. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, must be allowed and paid ~~twenty~~ twenty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the one-hundred-fifty-mile [241.40-kilometer] restriction imposed by subsection 1 does not apply.

Before any allowance for any such mileage or travel expenses may be made, the official, deputy, assistant, clerk, or other employee shall file with the employee's department, institution, board, commission, or agency an itemized statement showing the mileage traveled, the hour of departure and return, the days when and how traveled, the purpose thereof, and such other information and documentation as may be prescribed by rule of the employee's department, institution, board, commission, or agency. The statement must be submitted to the employee's department, institution, board, commission, or agency for approval and must be paid only when approved by the employee's department, institution, board, commission, or agency.

Approved March 31, 1995

Filed March 31, 1995



## CHAPTER 428

## SENATE BILL NO. 2089

(Senators Nalewaja, Robinson)  
(Representatives Kelsch, Carlisle, Coats)

CORRECTIONAL EMPLOYEE PERSONAL AND  
INVESTIGATIVE INFORMATION CONFIDENTIALITY

AN ACT to amend and reenact sections 44-04-18.3 and 44-04-18.7 of the North Dakota Century Code, relating to confidentiality of records of law enforcement and correctional employees and certain criminal intelligence information and criminal investigative information; to repeal section 54-23.3-07 of the North Dakota Century Code, relating to confidentiality of information pertaining to department of corrections and rehabilitation employees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.3. Records of ~~undercover~~ law enforcement ~~officers~~ and correctional employees.

1. Any telephone number and the home address of an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential and are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. If this information is recorded with other public information, a public agency or record custodian shall permit inspection and receipt of copies of the public information that is not confidential, but shall delete or withhold the confidential information. A public agency or record custodian may not deny a request for public information on the ground that it is recorded with a confidential address and phone number. A record containing information relating to an employee of the department of corrections and rehabilitation may be disclosed to an appropriate authority under policy established by the department of corrections and rehabilitation.
2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential and ~~exempt from the provisions of~~ not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. For purposes of this ~~section~~ subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.

SECTION 2. AMENDMENT. Section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.7. Criminal intelligence information and criminal investigative information - Nondisclosure - Record of information maintained.**

1. Active criminal intelligence information and active criminal investigative information are exempt from the provisions of confidential and not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. A criminal justice agency shall maintain a list of all files containing active criminal intelligence and investigative information which have been in existence for more than one year. With respect to each file, the list must contain the file's number or other identifying characteristic; and the date the file was established. The list required under this subsection is subject to section 44-04-18. Criminal intelligence and investigative information that is not considered "active" is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota to the extent that the information is personal information.
2. "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information must be considered "active" as long as it is related to intelligence gathering conducted with a reasonable good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
3. "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including; information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable good faith anticipation of securing an arrest or prosecution in the foreseeable future.
4. "Criminal justice agency" means any law enforcement agency; or prosecutor. The term also includes any other unit of government charged by law with criminal law enforcement duties or having custody of criminal intelligence or investigative information for the purpose of assisting law enforcement agencies in the conduct of active criminal investigations or prosecutions.
5. "Criminal intelligence and investigative information" does not include:
  - a. Arrestee description, including name, date of birth, address, race, sex, physical description, and occupation of arrestee.
  - b. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer.
  - c. Conviction information, including the name of any person convicted of a criminal offense.
  - d. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person.

- e. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.
  - f. A crime summary, including a departmental summary of crimes reported and public calls for service by classification, nature, and number.
  - g. Radio log, including a chronological listing of the calls dispatched.
  - h. General registers, including jail booking information.
6. "Personal information" means a person's medical information; motor vehicle operator's identification number; social security number; and any credit, debit, or electronic fund transfer card number. If this information is recorded with other public information, a public agency or record custodian shall permit inspection and receipt of copies of the public information that is not confidential, but shall delete or withhold the confidential information. A public agency or record custodian may not deny a request for public information on the ground that it is recorded with confidential information.

**SECTION 3. REPEAL.** Section 54-23.3-07 of the 1993 Supplement to the North Dakota Century Code is repealed.

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

Approved March 17, 1995  
Filed March 20, 1995

# **PARTNERSHIPS**

## **CHAPTER 429**

### **HOUSE BILL NO. 1330**

(Representative Froseth)

## **PARTNERSHIP REGISTRATION OF GENERAL PARTNER**

AN ACT to create and enact sections 45-10.1-07.1 and 45-11-03.1 of the North Dakota Century Code, relating to the registration of a general partner of a limited partnership and registration of a general partner filing a fictitious name certificate.

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

**SECTION 1.** Section 45-10.1-07.1 of the North Dakota Century Code is created and enacted as follows:

**45-10.1-07.1. Registration of general partner.** A general partner must be registered separately with the secretary of state at the time of filing a certificate of limited partnership or the registration of foreign limited partnership whenever that general partner is either a domestic or foreign:

1. Corporation;
2. Limited liability company;
3. Limited partnership;
4. General partnership using a fictitious name; or
5. Any other organization that has a registration responsibility with the secretary of state.

**SECTION 2.** Section 45-11-03.1 of the North Dakota Century Code is created and enacted as follows:

**45-11-03.1. Registration of general partner.** A general partner must be registered separately with the secretary of state at the time of filing a fictitious name certificate whenever that general partner is either a domestic or foreign:

1. Corporation;
2. Limited liability company;
3. Limited partnership;
4. General partnership using a fictitious name; or

5. Any other organization that has a registration responsibility with the secretary of state.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 430****HOUSE BILL NO. 1110**

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

**UNIFORM PARTNERSHIP ACT CHANGES**

AN ACT to create and enact chapters 45-13, 45-14, 45-15, 45-16, 45-17, 45-18, 45-19, 45-20, and 45-21 of the North Dakota Century Code, relating to the provisions of the Uniform Partnership Act (1994) which pertain to general partnership provisions, nature of partnership, relations of partners to persons dealing with partnership, relations of partners to each other and to partnership, transferees and creditors of partner, partner's dissociation, winding up partnership business, and conversions and mergers of partnership; to amend and reenact sections 45-11-01 and 45-12-02 of the North Dakota Century Code, relating to fictitious partnership names and existing partnerships; to repeal chapters 45-05, 45-06, 45-07, 45-08, 45-09, and section 45-12-04 of the North Dakota Century Code, relating to partnerships generally, relations of partners to others, relations of partners to one another, property rights of partner, dissolution and winding up of partnership, and citation of the Uniform Partnership Act; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 45-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**45-11-01. Use of fictitious partnership name.** Any partnership transacting business in this state under a fictitious name or under a designation that does not show the names of the persons interested as partners must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. When a partnership has more than two members, an additional three dollars must be paid for each additional member not to exceed two hundred fifty dollars. A limited partnership or a foreign limited partnership transacting business under a name filed under chapter 45-10.1 and as provided in section 45-11-03 or a partnership transacting business under a name filed under section 45-13-05 is not required to file a fictitious name certificate under this section.

The fictitious name:

1. May not contain the word "corporation", "company", "incorporated", "limited liability company", or "limited", or an abbreviation of any of those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".
2. May not be the same as or deceptively similar to any corporate name, limited liability company name, trade name, partnership name on file with the secretary of state, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state, unless there is filed with the fictitious name certificate a written consent of the holder of the similar name to use the proposed name and a filing fee of ten dollars.

**SECTION 2. AMENDMENT.** Section 45-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**45-12-02. Provisions for other existing partnerships. A**

1. Except for a general partnership governed by subsection 2, a general partnership formed under any statute of this state prior to July 1, 1959, including the general partners, of a special or limited partnership formed prior to July 1, 1959, are governed by the provisions of chapters 45-05 through 45-12, until January 1, 1997, from and after July 1, 1959. After December 31, 1996, all partnerships are governed as provided in subsection 3.
2. Before January 1, 1997, chapters 45-13 through 45-21 govern only a partnership formed:
  - a. After the effective date of this Act, unless that partnership is continuing the business of a dissolved partnership under section 45-09-13; and
  - b. Before the effective date of this Act, that elects, as provided by subsection 4, to be governed by chapters 45-13 through 45-21.
3. After December 31, 1996, this Act governs all partnerships.
4. Before January 1, 1997, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by chapters 45-13 through 45-21. Provisions of chapters 45-13 through 45-21 relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by chapters 45-13 through 45-21, only if the third party knows or has received a notification of the partnership's election to be governed by chapters 45-13 through 45-21.

**SECTION 3.** Chapter 45-13 of the North Dakota Century Code is created and enacted as follows:

**45-13-01. (101) Definitions.** In chapters 45-13 through 45-21 unless the context or subject matter otherwise requires:

1. "Business" includes every trade, occupation, and profession.
2. "Debtor in bankruptcy" means a person who is the subject of:
  - a. An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
  - b. A comparable order under federal, state, or foreign law governing insolvency.
3. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

4. "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section 45-14-02, predecessor law, or comparable law of another jurisdiction.
5. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
6. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.
7. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.
8. "Person" includes any legal or commercial entity. The term includes governmental subdivision, agency, or instrumentality.
9. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.
10. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
11. "Statement" means a statement of partnership authority under section 45-15-03, a statement of denial under section 45-15-04, a statement of dissociation under section 45-19-04, a statement of dissolution under section 45-20-05, a statement of merger under section 45-21-07, or an amendment or cancellation of any of the foregoing.
12. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

45-13-02. (102) Knowledge and notice.

1. A person knows a fact if the person has actual knowledge of it.
2. A person has notice of a fact if the person:
  - a. Knows of it;
  - b. Has received a notification of it; or
  - c. Has reason to know it exists from all of the facts known to the person at the time in question.
3. A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.
4. A person receives a notification when the notification:
  - a. Comes to the person's attention; or



- b. Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.
- 5. Except as otherwise provided in subsection 6, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
- 6. A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

45-13-03. (103) Effect of partnership agreement - Nonwaivable provisions.

- 1. Except as otherwise provided in subsection 2, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, chapters 45-13 through 45-21 govern relations among the partners and between the partners and the partnership.
- 2. The partnership agreement may not:
  - a. Vary the rights and duties under section 45-13-05 except to eliminate the duty to provide copies of statements to all of the partners;
  - b. Unreasonably restrict the right of access to books and records under subsection 2 of section 45-16-03;
  - c. Eliminate the duty of loyalty under subsection 2 of section 45-16-04 or subdivision c of subsection 2 of section 45-18-03, but:
    - (1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
    - (2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

- d. Unreasonably reduce the duty of care under subsection 3 of section 45-16-04 or subdivision c of subsection 2 of section 45-18-03;
- e. Eliminate the obligation of good faith and fair dealing under subsection 4 of section 45-16-04, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- f. Vary the power to dissociate as a partner under subsection 1 of section 45-18-02, except to require the notice under subsection 1 of section 45-18-01 to be in writing;
- g. Vary the right of a court to expel a partner in the events specified in subsection 5 of section 45-18-01;
- h. Vary the requirement to wind up the partnership business in cases specified in subsection 4, 5, or 6 of section 45-20-01; or
- i. Restrict rights of third parties under chapters 45-13 through 45-21.

45-13-04. (104) Supplemental principles of law.

- 1. Unless displaced by particular provisions of chapters 45-13 through 45-21, the principles of law and equity supplement chapters 45-13 through 45-21.
- 2. If an obligation to pay interest arises under chapters 45-13 through 45-21 and the rate is not specified, the rate is that specified in section 47-14-05.

45-13-05. (105) Execution, filing, and recording of statements.

- 1. A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in chapters 45-13 through 45-21 with respect to partnership property located in or transactions that occur in this state.
- 2. A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in chapters 45-13 through 45-21. A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in chapters 45-13 through 45-21.
- 3. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by chapters 45-13 through 45-21. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.
- 4. A person authorized by chapters 45-13 through 45-21 to file a statement may amend or cancel the statement by filing an amendment or

cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

5. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.
6. A partnership name filed in a statement under this section may not be the same as or deceptively similar to the name of any other partnership filed under this section or any corporation, limited liability company, or limited partnership, or a trade name or fictitious name certificate on file with the secretary of state, unless there is filed with the partnership statement a written consent of the holder of the similar name to use the name proposed by the partnership.
7. Any statement filed under this section must be renewed every five years from the date of the initial filing. A statement of renewal must be executed by the partnership on a form furnished by the secretary of state which is sent to the address of the chief executive office at least sixty days before the deadline for filing. If the secretary of state finds that the statement of renewal conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the partnership for any necessary corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement of renewal is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the address of the chief executive office.
8. A partnership shall notify the secretary of state in writing upon a change in address of the partnership's chief executive office. A statement of renewal filed by the secretary of state which reflects a change of address of the chief executive office of the partnership may serve as such notice.
9. a. The secretary of state shall charge and collect a fee for:
  - (1) Filing a statement under this section, one hundred dollars.
  - (2) Filing an amendment under this section, forty dollars.
  - (3) Filing a cancellation under this section, twenty-four dollars.
  - (4) Filing a renewal under this section, forty dollars.
- b. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

45-13-06. (106) Law governing internal relations. The law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

45-13-07. (107) Partnership subject to amendment or repeal of Act. A partnership governed by chapters 45-13 through 45-21 is subject to any amendment to or repeal of chapters 45-13 through 45-21.

SECTION 4. Chapter 45-14 of the North Dakota Century Code is created and enacted as follows:

45-14-01. (201) Partnership as entity. A partnership is an entity distinct from its partners.

45-14-02. (202) Formation of partnership.

1. Except as otherwise provided in subsection 2, the association of two or more persons to carry on as coowners a business for profit forms a partnership, whether or not the persons intend to form a partnership.
2. An association formed under a statute other than chapters 45-13 through 45-21, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under chapters 45-13 through 45-21.
3. In determining whether a partnership is formed, the following rules apply:
  - a. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the coowners share profits made by the use of the property.
  - b. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
  - c. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
    - (1) Of a debt by installments or otherwise;
    - (2) For services as an independent contractor or of wages or other compensation to an employee;
    - (3) Of rent;
    - (4) Of an annuity or other retirement benefit to a beneficiary, representative, or designee of a deceased or retired partner;
    - (5) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
    - (6) For the sale of the goodwill of a business or other property by installments or otherwise.

45-14-03. (203) Partnership property. Property acquired by a partnership is property of the partnership and not of the partners individually.

45-14-04. (204) When property is partnership property.

1. Property is partnership property if acquired in the name of:
  - a. The partnership; or
  - b. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.
2. Property is acquired in the name of the partnership by a transfer to:
  - a. The partnership in its name; or
  - b. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
3. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
4. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

SECTION 5. Chapter 45-15 of the North Dakota Century Code is created and enacted as follows:

45-15-01. (301) Partner agent of partnership. Subject to the effect of a statement of partnership authority under section 45-15-03:

1. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
2. An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

45-15-02. (302) Transfer of partnership property.

1. Partnership property may be transferred as follows:
  - a. Subject to the effect of a statement of partnership authority under section 45-15-03, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.
  - b. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
  - c. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
2. A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 45-15-01 and:
  - a. As to a subsequent transferee who gave value for property transferred under subdivision a or b of subsection 2, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or
  - b. As to a transferee who gave value for property transferred under subdivision c of subsection 1, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.
3. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection 2, from any earlier transferee of the property.
4. If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

45-15-03. (303) Statement of partnership authority.

1. A partnership may file a statement of partnership authority, which:
  - a. Must include:
    - (1) The name of the partnership;
    - (2) The street address of its chief executive office and of one office in this state, if there is one;

- (3) The names and mailing addresses of all of the partners and of an agent appointed and maintained by the partnership;
    - (4) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and
    - (5) The nature of business to be transacted; and
  - b. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.
- 2. If a filed statement of partnership authority is executed pursuant to subsection 3 of section 45-13-05 and states the name of the partnership but does not contain all of the other information required by subsection 1, the statement nevertheless operates with respect to a person not a partner as provided in subsections 3 and 4.
- 3. Except as otherwise provided in subsection 6, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:
  - a. Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.
  - b. A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.
- 4. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.
- 5. Except as otherwise provided in subsections 3 and 4 and sections 45-19-04 and 45-20-05, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.
- 6. Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the

statement, or the most recent amendment, was filed with the secretary of state.

45-15-04. (304) Statement of denial. A partner or other person named as a partner in a filed statement of partnership authority may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections 3 and 4 of section 45-15-03.

45-15-05. (305) Partnership liable for partner's actionable conduct.

1. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.
2. If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

45-15-06. (306) Partner's liability.

1. Except as otherwise provided in subsection 2, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.
2. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

45-15-07. (307) Actions by and against partnership and partners.

1. A partnership may sue and be sued in the name of the partnership.
2. An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.
3. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.
4. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:
  - a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
  - b. The partnership is a debtor in bankruptcy;
  - c. The partner has agreed that the creditor need not exhaust partnership assets;



- d. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
  - e. Liability is imposed on the partner by law or contract independent of the existence of the partnership.
- 5. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 45-15-08.

45-15-08. (308) Liability of purported partner.

- 1. If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.
- 2. If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.
- 3. A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.
- 4. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.
- 5. Except as otherwise provided in subsections 1 and 2, persons who are not partners as to each other are not liable as partners to other persons.

SECTION 6. Chapter 45-16 of the North Dakota Century Code is created and enacted as follows:

45-16-01. (401) Partner's rights and duties.

1. Each partner is deemed to have an account that is:
  - a. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
  - b. Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.
2. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.
3. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.
4. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.
5. A payment or advance made by a partner which gives rise to a partnership obligation under subsection 3 or 4 constitutes a loan to the partnership which accrues interest from the date of the payment or advance.
6. Each partner has equal rights in the management and conduct of the partnership business.
7. A partner may use or possess partnership property only on behalf of the partnership.
8. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.
9. A person may become a partner only with the consent of all of the partners.
10. A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.
11. This section does not affect the obligations of a partnership to other persons under section 45-15-01.

45-16-02. (402) Distributions in kind. A partner has no right to receive, and may not be required to accept, a distribution in kind.

45-16-03. (403) Partner's rights and duties with respect to information.

1. A partnership shall keep its books and records, if any, at its chief executive office.
2. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.
3. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:
  - a. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or chapters 45-13 through 45-21; and
  - b. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

45-16-04. (404) General standards of partner's conduct.

1. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections 2 and 3.
2. A partner's duty of loyalty to the partnership and the other partners is limited to the following:
  - a. To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
  - b. To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
  - c. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.
3. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

4. A partner shall discharge the duties to the partnership and the other partners under chapters 45-13 through 45-21 or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
5. A partner does not violate a duty or obligation under chapters 45-13 through 45-21 or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.
6. A partner may lend money to and transact other business with the partnership, and as to each loan or transaction, the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.
7. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

45-16-05. (405) Actions by partnership and partners.

1. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.
2. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:
  - a. Enforce the partner's rights under the partnership agreement;
  - b. Enforce the partner's rights under chapters 45-13 through 45-21, including:
    - (1) The partner's rights under section 45-16-01, 45-16-03, or 45-16-04;
    - (2) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 45-19-01 or enforce any other right under chapter 45-18 or 45-19; or
    - (3) The partner's right to compel a dissolution and winding up of the partnership business under section 45-20-01 or enforce any other right under chapter 45-20; or
  - c. Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.
3. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

45-16-06. (406) Continuation of partnership beyond definite term or particular undertaking.

1. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.
2. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

SECTION 7. Chapter 45-17 of the North Dakota Century Code is created and enacted as follows:

45-17-01. (501) Partner not coowner of partnership property. A partner is not a coowner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

45-17-02. (502) Partner's transferable interest in partnership. The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

45-17-03. (503) Transfer of partner's transferable interest.

1. A transfer, in whole or in part, of a partner's transferable interest in the partnership:
  - a. Is permissible;
  - b. Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
  - c. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.
2. A transferee of a partner's transferable interest in the partnership has a right:
  - a. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
  - b. To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
  - c. To seek under subsection 6 of section 45-20-01 a judicial determination that it is equitable to wind up the partnership business.
3. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

4. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.
5. A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.
6. A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

45-17-04. (504) Partner's transferable interest subject to charging order.

1. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.
2. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.
3. At any time before foreclosure, an interest charged may be redeemed:
  - a. By the judgment debtor;
  - b. With property other than partnership property, by one or more of the other partners; or
  - c. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.
4. Chapters 45-13 through 45-21 do not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.
5. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

SECTION 8. Chapter 45-18 of the North Dakota Century Code is created and enacted as follows:

45-18-01. (601) Events causing partner's dissociation. A partner is dissociated from a partnership upon the occurrence of any of the following events:

1. The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner.
2. An event agreed to in the partnership agreement as causing the partner's dissociation.

3. The partner's expulsion pursuant to the partnership agreement.
4. The partner's expulsion by the unanimous vote of the other partners if:
  - a. It is unlawful to carry on the partnership business with that partner;
  - b. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
  - c. Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or
  - d. A partnership that is a partner has been dissolved and its business is being wound up.
5. On application by the partnership or another partner, the partner's expulsion by judicial determination because:
  - a. The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
  - b. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 45-16-04; or
  - c. The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner.
6. The partner's:
  - a. Becoming a debtor in bankruptcy;
  - b. Executing an assignment for the benefit of creditors;
  - c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
  - d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated.
7. In the case of a partner who is an individual:
  - a. The partner's death;

- b. The appointment of a guardian or general conservator for the partner; or
  - c. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.
- 8. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee.
- 9. In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative.
- 10. Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

45-18-02. (602) Partner's power to dissociate - Wrongful dissociation.

- 1. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to subsection 1 of section 45-18-01.
- 2. A partner's dissociation is wrongful only if:
  - a. It is in breach of an express provision of the partnership agreement; or
  - b. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
    - (1) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under subsections 6 through 10 of section 45-18-01 or wrongful dissociation under this subsection;
    - (2) The partner is expelled by judicial determination under subsection 5 of section 45-18-01;
    - (3) The partner is dissociated by becoming a debtor in bankruptcy; or
    - (4) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.
- 3. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.



45-18-03. (603) Effect of partner's dissociation.

1. If a partner's dissociation results in a dissolution and winding up of the partnership business, chapter 45-20 applies, otherwise, chapter 45-19 applies.
2. Upon a partner's dissociation:
  - a. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 45-20-03;
  - b. The partner's duty of loyalty under subdivision c of subsection 2 of section 45-16-04 terminates; and
  - c. The partner's duty of loyalty under subdivisions a and b of subsection 2 of section 45-16-04 and duty of care under subsection 3 of section 45-16-04 continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 45-20-03.

SECTION 9. Chapter 45-19 of the North Dakota Century Code is created and enacted as follows:

45-19-01. (701) Purchase of dissociated partner's interest.

1. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 45-20-01, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection 2.
2. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection 2 of section 45-20-07 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.
3. Damages for wrongful dissociation under subsection 2 of section 45-18-02, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.
4. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 45-19-02.
5. If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the

dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection 3.

6. If a deferred payment is authorized under subsection 8, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection 3, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.
7. The payment or tender required by subsection 5 or 6 must be accompanied by the following:

  - a. A statement of partnership assets and liabilities as of the date of dissociation;
  - b. The latest available partnership balance sheet and income statement, if any;
  - c. An explanation of how the estimated amount of the payment was calculated; and
  - d. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection 3, or other terms of the obligation to purchase.
8. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.
9. A dissociated partner may maintain an action against the partnership, pursuant to paragraph 2 of subdivision b of subsection 2 of section 45-16-05, to determine the buyout price of that partner's interest, any offsets under subsection 3, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection 3, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection 8, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection 7.

45-19-02. (702) Dissociated partner's power to bind and liability to partnership.

1. For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under chapter 45-21, is bound by an act of the dissociated partner which would have bound the partnership under section 45-15-01 before dissociation only if at the time of entering into the transaction the other party:
  - a. Reasonably believed that the dissociated partner was then a partner;
  - b. Did not have notice of the partner's dissociation; and
  - c. Is not deemed to have had knowledge under subsection 4 of section 45-15-03 or notice under subsection 3 of section 45-19-04.
2. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection 1.

45-19-03. (703) Dissociated partner's liability to other persons.

1. A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection 2.
2. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under chapter 45-21, within two years after the partner's dissociation, only if at the time of entering into the transaction the other party:
  - a. Reasonably believed that the dissociated partner was then a partner;
  - b. Did not have notice of the partner's dissociation; and
  - c. Is not deemed to have had knowledge under subsection 4 of section 45-15-03 or notice under subsection 3 of section 45-19-04.
3. By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.
4. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

45-19-04. (704) Statement of dissociation.

1. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

2. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections 3 and 4 of section 45-15-03.
3. For the purposes of subdivision c of subsection 1 of section 45-19-02 and subdivision c of subsection 2 of section 45-19-03, a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

45-19-05. (705) Continued use of partnership name. Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

**SECTION 10.** Chapter 45-20 of the North Dakota Century Code is created and enacted as follows:

45-20-01. (801) Events causing dissolution and winding up of partnership business. A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subsections 2 through 10 of section 45-18-01, of that partner's express will to withdraw as a partner, or on a later date specified by the partner.
2. In a partnership for a definite term or particular undertaking:
  - a. The expiration of ninety days after a partner's dissociation by death or otherwise under subsections 6 through 10 of section 45-18-01 or wrongful dissociation under subsection 2 of section 45-18-02, unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to subdivision a of subsection 2 of section 45-18-02, agree to continue the partnership;
  - b. The express will of all of the partners to wind up the partnership business; or
  - c. The expiration of the term or the completion of the undertaking.
3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business.
4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.
5. On application by a partner, a judicial determination that:
  - a. The economic purpose of the partnership is likely to be unreasonably frustrated;

- b. Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or
  - c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.
- 6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:
  - a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
  - b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

45-20-02. (802) Partnership continues after dissolution.

- 1. Subject to subsection 2, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.
- 2. At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:
  - a. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and
  - b. The rights of a third party accruing under subsection 1 of section 45-20-04 or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

45-20-03. (803) Right to wind up partnership business.

- 1. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court, for good cause shown, may order judicial supervision of the winding up.
- 2. The legal representative of the last surviving partner may wind up a partnership's business.
- 3. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil,

criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 45-20-07, settle disputes by mediation or arbitration, and perform other necessary acts.

45-20-04. (804) Partner's power to bind partnership after dissolution. Subject to section 45-20-05, a partnership is bound by a partner's act after dissolution which:

1. Is appropriate for winding up the partnership business; or
2. Would have bound the partnership under section 45-15-01 before dissolution, if the other party to the transaction did not have notice of the dissolution.

45-20-05. (805) Statement of dissolution.

1. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.
2. A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection 3 of section 45-15-03.
3. For the purposes of sections 45-15-01 and 45-20-04, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.
4. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections 3 and 4 of section 45-15-03 in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

45-20-06. (806) Partner's liability to other partners after dissolution.

1. Except as otherwise provided in subsection 2, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 45-20-04.
2. A partner who, with knowledge of the dissolution, incurs a partnership liability under subsection 2 of section 45-20-04 by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

45-20-07. (807) Settlement of accounts and contributions among partners.

1. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must

be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection 2.

2. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account.
3. If a partner fails to contribute, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.
4. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement.
5. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.
6. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

SECTION 11. Chapter 45-21 of the North Dakota Century Code is created and enacted as follows:

45-21-01. (901) Definitions. In this chapter:

1. "General partner" means a partner in a partnership and a general partner in a limited partnership.
2. "Limited partner" means a limited partner in a limited partnership.
3. "Limited partnership" means a limited partnership created under chapter 45-10.1, predecessor law, or comparable law of another jurisdiction.
4. "Partner" includes both a general partner and a limited partner.

45-21-02. (902) Conversion of partnership to limited partnership.

1. A partnership may be converted to a limited partnership pursuant to this section.
2. The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

3. After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:
  - a. A statement that the partnership was converted to a limited partnership from a partnership;
  - b. Its former name; and
  - c. A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.
4. The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.
5. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 45-10.1.

45-21-03. (903) Conversion of limited partnership to partnership.

1. A limited partnership may be converted to a partnership pursuant to this section.
2. Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.
3. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.
4. The conversion takes effect when the certificate of limited partnership is canceled.
5. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

45-21-04. (904) Effect of conversion - Entity unchanged.

1. A partnership or limited partnership that has been converted pursuant to this chapter is for all purposes the same entity that existed before the conversion.
2. When a conversion takes effect:



- a. All property owned by the converting partnership or limited partnership remains vested in the converted entity;
- b. All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and
- c. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

45-21-05. (905) Merger of partnerships.

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more partnerships or limited partnerships.
2. The plan of merger must set forth:
  - a. The name of each partnership or limited partnership that is a party to the merger;
  - b. The name of the surviving entity into which the other partnerships or limited partnerships will merge;
  - c. Whether the surviving entity is a partnership or a limited partnership and the status of each partner;
  - d. The terms and conditions of the merger;
  - e. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and
  - f. The street address of the surviving entity's chief executive office.
3. The plan of merger must be approved:
  - a. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
  - b. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.
4. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
5. The merger takes effect on the later of:
  - a. The approval of the plan of merger by all parties to the merger, as provided in subsection 3;

- b. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or
- c. Any effective date specified in the plan of merger.

45-21-06. (906) Effect of merger.

1. When a merger takes effect:

- a. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;
- b. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;
- c. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and
- d. An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

3. A partner of the surviving partnership or limited partnership is liable for:

- a. All obligations of a party to the merger for which the partner was personally liable before the merger;
- b. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and
- c. All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

4. If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 45-20-07 or in the Limited Partnership Act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

5. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 45-19-01 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 45-19-02 by an act of a general partner dissociated under this subsection, and the partner is liable under section 45-19-03 for transactions entered into by the surviving entity after the merger takes effect.

45-21-07. (907) Statement of merger.

1. After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.
2. A statement of merger must contain:
  - a. The name of each partnership or limited partnership that is a party to the merger;
  - b. The name of the surviving entity into which the other partnerships or limited partnership were merged;
  - c. The street address of the surviving entity's chief executive office and of an office in this state, if any; and
  - d. Whether the surviving entity is a partnership or a limited partnership.
3. Except as otherwise provided in subsection 4, for the purposes of section 45-15-02, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.
4. For the purposes of section 45-15-02, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.
5. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection 3 of section 45-13-05, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection 2, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections 3 and 4.

45-21-08. (908) Nonexclusive. This chapter is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

**SECTION 12. REPEAL.** Chapters 45-05, 45-06, 45-07, 45-08, 45-09, and section 45-12-04 of the North Dakota Century Code are repealed.

**SECTION 13. EFFECTIVE DATE.** Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of this Act become effective on January 1, 1996, and section 12 of this Act becomes effective on January 1, 1997.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 431****SENATE BILL NO. 2447**

(Senators Lee, Grindberg)  
(Representatives Mickelson, Rydell)

**FICTITIOUS NAME CERTIFICATES**

AN ACT to amend and reenact sections 45-11-02 and 45-11-04.1 of the North Dakota Century Code, relating to the content and renewal of fictitious name certificates filed with the secretary of state.

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

**SECTION 1. AMENDMENT.** Section 45-11-02 of the North Dakota Century Code is amended and reenacted as follows:

**45-11-02. How certificate executed - Content.** A certificate filed with the secretary of state as provided in section 45-11-01 must be signed by one or more of the general partners. The certificate must state the fictitious name, a brief description of the nature of business in which the partnership is engaged in this state, the names in full and principal addresses of all the general partners, and the address of the principal place of business.

**SECTION 2. AMENDMENT.** Section 45-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**45-11-04.1. Renewal.** Any fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing, except that those filings existing prior to July 1, 1985, must be required to file the statement of renewal by July 1, 1987, and then every five years thereafter. The statement of renewal must be executed by the partnership on forms prescribed and furnished by the secretary of state which are sent to the address of the principal place of business at least sixty days before the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, a brief description of the nature of business in which the partnership is engaged in this state, the names and addresses of all general partners, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the statement to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of such cancellation must be mailed to the address of the principal place of business.

Approved March 17, 1995

Filed March 20, 1995

# PRINTING LAWS

## CHAPTER 432

### SENATE BILL NO. 2356

(Senator Lips)

### STATE PRINTING BID REQUIREMENTS

AN ACT to amend and reenact sections 46-02-01, 46-02-09, and 46-02-14 of the North Dakota Century Code, relating to authorization for printing by state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 46-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**46-02-01. Printing and binding - Duties of the office of management and budget.** The office of management and budget shall have charge of all the printing required to be done for the several departments of the state government except as otherwise provided by section 46-02-09. No printing required by any state officer as provided in this chapter may be paid for unless it was authorized by the legislative assembly or by the office of management and budget for three seven hundred fifty dollars and over.

**SECTION 2. AMENDMENT.** Section 46-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**46-02-09. Sixth-class items - When bids or quotations required.** All work on sixth-class items amounting to three seven hundred fifty dollars or over, not done by the central duplicating service of the office of management and budget or by departments, institutions, or state offices, must be let by competitive bidding or by the solicitation of at least two quotations by the office of management and budget, or by the departments, institutions, or state offices authorized to bid their own printing needs. Printing items amounting to less than three seven hundred fifty dollars may be given by the department head to ~~the~~ a printer of his choice selected by the department head and accompanied by a purchase order of which one copy must be sent to the office of management and budget. Where practical, all departments, institutions, or state offices authorized to do their own bidding shall take advantage of annual contracts established by the office of management and budget.

**SECTION 3. AMENDMENT.** Section 46-02-14 of the North Dakota Century Code is amended and reenacted as follows:

46-02-14. Copies of documents to accompany bills for printing. Every person doing public printing pursuant to the provisions of this chapter shall file and preserve one copy of each document or other matter printed ~~by him~~ for the state and for orders of ~~three~~ seven hundred fifty dollars or over which ~~he~~ the printer shall deliver to the office of management and budget, together with a bill of the same.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 433****HOUSE BILL NO. 1119**

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

**LAWS DISPOSAL**

AN ACT to amend and reenact section 46-04-19 of the North Dakota Century Code, relating to disposition of laws by the secretary of state.

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

**SECTION 1. AMENDMENT.** Section 46-04-19 of the North Dakota Century Code is amended and reenacted as follows:

**46-04-19. Secretary of state may dispose of laws.** The secretary of state may dispose of all volumes of the laws ~~in his possession which~~ that are ten or more years old, except ~~ten volumes~~ one volume of each ~~which he shall keep~~ that must be retained for historical purposes.

Approved March 14, 1995  
Filed March 14, 1995



# PROPERTY

## CHAPTER 434

### SENATE BILL NO. 2521

(Senators Wanzek, Krauter)  
(Representatives Mahoney, Nicholas)

## LANDOWNER IMMUNITY FOR ROAD USE

AN ACT to provide for landowner immunity from liability for injuries incurred while using a road located on the landowner's property; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Landowner immunity - Use and condition of roads.** A landowner may not be held liable for a claim resulting from the use or condition of a road across the landowner's property unless the landowner is primarily and directly responsible for the construction and maintenance of the road or an affirmative act of the landowner causes or contributes to the claim.

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

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 435****SENATE BILL NO. 2158**

(Natural Resources Committee)  
(At the request of the Attorney General)

**PUBLIC LANDS JURISDICTION**

AN ACT to amend and reenact section 47-04-01 of the North Dakota Century Code, relating to jurisdiction over property in the state; and to repeal sections 47-01-14 and 54-01-17 of the North Dakota Century Code, relating to ownership of land below ordinary high watermark and granting of easements to the federal government on state-owned lands.

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

**SECTION 1. AMENDMENT.** Section 47-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**47-04-01. Jurisdiction - State laws - ~~Federal laws.~~** Real property within this state is governed by the law of this state; ~~except when the title is in the United States.~~

**SECTION 2. REPEAL.** Sections 47-01-14 and 54-01-17 of the North Dakota Century Code are repealed.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 436****HOUSE BILL NO. 1304****(Representative DeKrey)****FOREST EASEMENTS**

AN ACT to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to easements for forest purposes.

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

**SECTION 1.** A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

**Restrictions on easements for forest purposes.** Notwithstanding any other provision of law, a person may not create, convey, or record any easement, servitude, or nonappurtenant restriction on the use of real property within thirty-three feet [10.06 meters] of the centerline of any section line if the purpose of that easement, servitude, or restriction is to retain or protect forests.

Approved March 6, 1995

Filed March 7, 1995

**CHAPTER 437****HOUSE BILL NO. 1339**

(Representatives DeKrey, Huether)  
(Senators Kinnoin, Krebsbach, Tennefos)

**LEASE SECURITY DEPOSIT LIMITS**

AN ACT to amend and reenact subsection 1 of section 47-16-07.1 of the North Dakota Century Code, relating to real property and dwelling security deposits.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 47-16-07.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in a federally insured interest-bearing savings or passbook account established solely for security deposits. The security deposit and any interest accruing on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent, except if the lessee is housing a pet on the leased premises, the security may not exceed one thousand five hundred dollars.

Approved April 4, 1995  
Filed April 4, 1995

**CHAPTER 438****HOUSE BILL NO. 1299****(Representatives Berg, Clayburgh)****ABANDONED PROPERTY OF TENANT DISPOSAL**

AN ACT to amend and reenact section 47-16-30.1 of the North Dakota Century Code, relating to disposal of abandoned property.

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

**SECTION 1. AMENDMENT.** Section 47-16-30.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-16-30.1. Abandoned property - Disposal by lessor.** Property with a total estimated value of not more than one thousand five hundred dollars which is left on the premises of a leased dwelling thirty days after the tenant has vacated the premises after the expiration of the lease term may be retained by the lessor and disposed of without legal process. The lessor is entitled to the proceeds from the sale of the property. The lessor may recover, from the lessee's security deposit, any storage and moving expenses in excess of the proceeds from the sale incurred in disposing of the property.

Approved March 21, 1995

Filed March 21, 1995

## CHAPTER 439

## SENATE BILL NO. 2306

(Senators B. Stenehjem, O'Connell)  
(Representatives Boehm, Carlisle, Tollefson)

## OIL AND GAS ROYALTY PAYMENTS

AN ACT to amend and reenact section 47-16-39.1 of the North Dakota Century Code, relating to the payment of oil and gas royalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-39.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-16-39.1. Obligation to pay royalties - Breach.** The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or ~~his~~ the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of ~~such~~ the mineral owner or his the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of ~~such~~ the obligation may constitute grounds for the cancellation of ~~such~~ the lease in ~~such~~ cases where it is determined by the court that the equities of the case require cancellation. ~~In the event~~ If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or ~~his~~ the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought, the unpaid royalties shall thereafter bear interest calculated at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located ~~shall have~~ has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section ~~shall be~~ is entitled to recover any court costs and reasonable attorney's fees. This section ~~shall~~ does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, or in the event of a dispute of title existing ~~which~~ that would ~~effect~~ affect distribution of royalty payments.

Approved April 4, 1995  
Filed April 4, 1995

**CHAPTER 440****SENATE BILL NO. 2336**

(Senators Holmberg, Traynor)

**HOMESTEAD EXEMPTION WAIVER**

AN ACT to amend and reenact section 47-18-05.1 of the North Dakota Century Code, relating to property exempted from a homestead exemption waiver.

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

**SECTION 1. AMENDMENT.** Section 47-18-05.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-18-05.1. Waiver of homestead exemption - Notice required - Exemption for platted property.**

1. A mortgage on a homestead which is executed after June 30, 1991, and which is not a purchase money contract must contain the following statement printed in a conspicuous manner:

I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale and that, by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

This statement must be immediately followed by the date and the signature of the person to indicate that the person is specifically and knowingly waiving the exemption, which must be a separate signature from that person's signature to the entire mortgage contract.

2. This section does not apply to ~~mortgages~~ a mortgage on property ~~platted under chapter 40-50.1~~ less than forty acres [16.19 hectares].

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 441

## HOUSE BILL NO. 1331

(Representative Froseth)

## TRADE NAME REGISTRATION

AN ACT to amend and reenact sections 47-25-01 and 47-25-02 of the North Dakota Century Code, relating to registration of trade names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-25-01 of the North Dakota Century Code is amended and reenacted as follows:

47-25-01. "Trade name" defined - Registration. Every name under which any person or organization shall hereafter do or transact any business in this state, other than the true name of such person or organization, is hereby declared to be a "trade name" if such name is registered under the provisions of this chapter, and any. A person who or organization that has registered a trade name hereunder may institute a civil suit prohibiting any other person from using such name. The provisions of this chapter shall not prohibit any person engaged in business under a trade name prior to July 1, 1959, from continuing business under such name.

SECTION 2. AMENDMENT. Section 47-25-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-02. Trade name - Registration - Statement - Contents. Any A person who engages or organization may not engage in business in this state under a trade name may register until the trade name is registered with the secretary of state for purposes of registering a trade name. This section does not apply to partnerships that have filed a fictitious name certificate as provided under chapter 45-11. The trade name registration must be a statement executed by the owner upon forms prescribed by the secretary of state, setting forth: (1) the trade name to be registered, (2) the name and address of the owner of the business, and if a corporation, limited liability company, or other organization, the state or country of incorporation and or organization, (3) address of the principal place of business, and (3) (4) the nature of the business in detail.

Approved March 24, 1995

Filed March 27, 1995



**CHAPTER 442****HOUSE BILL NO. 1090**

(Agriculture Committee)

(At the request of the Board of University and School Lands)

**UNCLAIMED PROPERTY**

AN ACT to create and enact a new subsection to section 47-30.1-01 and section 47-30.1-16.1 of the North Dakota Century Code, relating to definitions applicable to the Uniform Unclaimed Property Act and unclaimed mineral proceeds; to amend and reenact subsection 1 of section 47-30.1-02, subsection 1 of section 47-30.1-05, subsection 4 of section 47-30.1-06, subsections 1 and 3 of section 47-30.1-07, section 47-30.1-10, subsection 1 of section 47-30.1-12, section 47-30.1-13, subsection 1 of section 47-30.1-14, sections 47-30.1-16, 47-30.1-17, subsections 1 and 4 of section 47-30.1-18, section 47-30.1-19.1, subsection 3 of section 47-30.1-24, and subsection 1 of section 47-30.1-35 of the North Dakota Century Code, relating to abandoned property under the Uniform Unclaimed Property Act; and to repeal sections 47-30.1-19 and 47-30.1-21 of the North Dakota Century Code, relating to the payment or delivery of and the crediting of dividends accrued on abandoned property.

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

**SECTION 1.** A new subsection to section 47-30.1-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

"Mineral proceeds" means all obligations to pay resulting from the production and sale of minerals, including net revenue interest, royalties, overriding royalties, production payments, and joint operating agreements and all obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties.

**SECTION 2. AMENDMENT.** Subsection 1 of section 47-30.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five three years after it became payable or distributable is presumed abandoned.

**SECTION 3. AMENDMENT.** Subsection 1 of section 47-30.1-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any sum payable on a check, draft, or similar instrument, except those subject to section 47-30.1-04, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than five three years after it

was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within ~~five~~ three years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

**SECTION 4. AMENDMENT.** Subsection 4 of section 47-30.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Any property described in subsection 1 that is automatically renewable is matured for purposes of subsection 1 upon the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in section ~~47-30.1-19~~ 47-30.1-17, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

**SECTION 5. AMENDMENT.** Subsections 1 and 3 of section 47-30.1-07 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than ~~five~~ three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subdivision b of subsection 3 is presumed abandoned if unclaimed for more than ~~four~~ three years.
3. For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:
  - a. The company knows that the insured or annuitant has died; or
  - b. (1) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;
  - (2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph 1; and
  - (3) Neither the insured nor any other person appearing to have an interest in the policy within the preceding ~~four~~ three years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as

evidenced by a memorandum or other record on file prepared by an employee of the company.

**SECTION 6. AMENDMENT.** Section 47-30.1-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-10. Stock and other intangible interests in business associations.**

1. Except as provided in subsections 2 and 5, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for ~~five~~ three years and the owner within ~~five~~ three years has not:
  - a. Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or
  - b. Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.
2. At the expiration of a ~~five-year~~ three-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least ~~five~~ three dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If ~~five~~ three dividends, distributions, or other sums are paid during the ~~five-year~~ three-year period, the period leading to a presumption of abandonment commences on the date payment of the first unclaimed dividend, distribution, or other sum became due and payable. If ~~five~~ three dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been ~~five~~ three dividends, distributions, or other sums that have not been claimed by the owner.
3. The running of the ~~five-year~~ three-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection 1. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.
4. At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.
5. This chapter does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with

respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within ~~five~~ three years communicated in any manner described in subsection 1.

**SECTION 7. AMENDMENT.** Subsection 1 of section 47-30.1-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within ~~five~~ three years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

**SECTION 8. AMENDMENT.** Section 47-30.1-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-13. Property held by courts and public agencies.** Intangible property held for the owner by a court, state, or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than ~~five~~ three years after becoming payable or distributable is presumed abandoned. However, unclaimed intangible property held for the owner by a public employee pension program in this state is not subject to abandonment under this chapter.

**SECTION 9. AMENDMENT.** Subsection 1 of section 47-30.1-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than ~~five~~ three years after becoming payable or distributable is presumed abandoned.

**SECTION 10. AMENDMENT.** Section 47-30.1-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-16. Contents of safe deposit box or other safekeeping repository.** All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remain unclaimed by the owner for more than ~~ten~~ three years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

**SECTION 11.** Section 47-30.1-16.1 of the North Dakota Century Code is created and enacted as follows:

**47-30.1-16.1. Mineral proceeds.**

1. Any sum payable as mineral proceeds that has remained unclaimed by the owner for more than three years after it became payable or distributable and the owner's underlying right to receive those mineral proceeds are deemed abandoned.

2. At the time an owner's underlying right to receive mineral proceeds is deemed abandoned, any mineral proceeds then owing to the owner and any proceeds accruing after that time are deemed abandoned. The sum deemed abandoned is subject to the custody of the state as unclaimed property if:
  - a. The last known address, as shown on the records of the holder, of the apparent owner is in this state;
  - b. The records of the holder do not reflect the last known address and it is established that the last known address of the apparent owner is in this state;
  - c. The records of the holder do not reflect the last known address, and the holder is domiciled in or is a government or governmental subdivision or agency of this state; or
  - d. The mineral interest is located in this state and:
    - (1) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide by law for the escheat or custodial taking of the property or is in a state in which that state's escheat or unclaimed property law is not applicable to the property; or
    - (2) The last known address of the apparent owner is unknown and the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or a state in which the state escheat or unclaimed property law is not applicable to the property.
3. A holder may not deduct from mineral proceeds any charge due to dormancy unless:
  - a. There is an enforceable written contract between the holder and the owner of the mineral proceeds under which the holder may impose a charge;
  - b. For mineral proceeds in excess of five dollars, the holder, no more than three months before the initial imposition of those charges, has mailed written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed, provided the notice required in this paragraph need not be given with respect to charges imposed before the effective date of this Act; and
  - c. The holder regularly imposes such charges and in no instance reverses or otherwise cancels them.
4. Charges authorized under subsection 3 may be made and collected monthly, quarterly, or annually. However, beginning with the effective date of this Act, the cumulative amount of charges may not exceed twelve dollars per year and may only be charged for a maximum of three calendar years.

**SECTION 12. AMENDMENT.** Section 47-30.1-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-17. Report and delivery of abandoned property.**

1. A person holding property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the administrator concerning and deliver the property to the administrator as provided in this section.
2. The report must be verified and include:
  - a. Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of fifty dollars or more presumed abandoned under this chapter.
  - b. In the case of unclaimed funds of fifty dollars or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds.
  - c. In the case of the contents of a safe deposit box or other safekeeping repository ~~or of other tangible property~~, a description of the property ~~and~~; the place where it is held ~~and~~; where it may be inspected by the administrator; and any amounts owing to the holder.
  - d. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under fifty dollars each may be reported in the aggregate.
  - e. The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.
  - f. Other information the administrator prescribes by rule as necessary for the administration of this chapter.
3. If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed the holder's name while holding the property, the report must include all known names and addresses of each previous holder of the property.
4. ~~The report must be filed before November first of each year as of June thirtieth, next preceding; but the report of any life insurance company must be filed before May first of each year as of December thirty-first next preceding.~~ The report and property must be delivered by November first of each year for property deemed abandoned as of the preceding June thirtieth. The report and property of any life insurance company must be delivered by May first of each year for property

deemed abandoned as of December thirty-first of the previous year. On written request by any person required to file a report, the administrator may postpone the reporting date.

5. Not more than one hundred twenty days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the owner's last known address informing the owner that the holder is in possession of property subject to this chapter if:
  - a. The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;
  - b. The claim of the apparent owner is not barred by the statute of limitations; and
  - c. The property has a value of fifty dollars or more.
6. The holder of an interest under section 47-30.1-10 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the administrator. Upon delivery of a duplicate certificate to the administrator, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with section 47-30.1-20 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

**SECTION 13. AMENDMENT.** Subsections 1 and 4 of section 47-30.1-18 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The administrator shall cause a notice to be published not later than ~~March~~ October first of the year immediately following the report required by section 47-30.1-17 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.
4. This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments ~~presumed abandoned under section 47-30.1-19~~ for which the holder is not required to report the name of the apparent owner.

**SECTION 14. AMENDMENT.** Section 47-30.1-19.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-19.1. Abandoned property lists - Preparation - Contents - Confidentiality.** The administrator shall prepare two lists with information about property paid or delivered to the administrator under section ~~47-30.1-19~~ 47-30.1-17.

1. One list must refer to all unclaimed funds of fifty dollars or more in the administrator's custody and must contain the name and last known address of each person appearing from the holders' report to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary from the report of an insurance company.
2. The second list must refer to property that has been in the administrator's custody for more than twenty-four months and must contain the following information:
  - a. The name and last known address of each person appearing from the holders' report to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary from the report of an insurance company.
  - b. The amount paid or delivered to the administrator.
  - c. The name of the person who paid or delivered the property to the administrator.
  - d. A general description of the property.
  - e. Other information the administrator deems appropriate for inclusion in the list.
3. The lists described in this section must be updated ~~semiannually~~ annually.
4. The lists described in this section must be available for public inspection at all reasonable business hours and copies of each list must be available to the public for a fee to be set by the administrator.
5. Reports filed with the administrator under section 47-30.1-17 are not public records and are not open to public inspection until twenty-four months after the date payment or delivery is made ~~under section 47-30.1-19~~.

**SECTION 15. AMENDMENT.** Subsection 3 of section 47-30.1-24 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator; ~~together with any additional amount required by section 47-30.1-21~~.

**SECTION 16. AMENDMENT.** Subsection 1 of section 47-30.1-35 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. All agreements to pay compensation to recover or assist in the recovery of property reported under section 47-30.1-17, made within twenty-four months after the date payment or delivery is made ~~under section 47-30.1-19~~, are unenforceable.



**SECTION 17. REPEAL.** Sections 47-30.1-19 and 47-30.1-21 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved April 3, 1995

Filed April 3, 1995

# PUBLIC BUILDINGS

## CHAPTER 443

### HOUSE BILL NO. 1452

(Representatives Carlson, Hagle, Skarphol)  
(Senator Freborg)

## PUBLIC CONSTRUCTION AND IMPROVEMENT CONTRACTS

AN ACT to create and enact chapter 48-01.1 and a new section to chapter 48-02 of the North Dakota Century Code, relating to public construction and public improvement contracts; to amend and reenact sections 11-11-26, 15-47-15, 25-01.1-33, 39-03-08.1, 40-22-06, 40-22-19, 40-22-29, 40-24-19, 40-28-07, 40-29-07, 40-31-04, 40-33.2-09, subsection 7 of section 40-33.3-06, sections 40-49-14, 43-07-11, 48-02-10.1, 48-02-13, 48-02-15, 48-05-12, 57-40.2-14, 61-07-09, 61-12-25, 61-16.1-14, 61-21-25, 61-21-45, and 61-24.3-03.1 of the North Dakota Century Code, relating to public construction and public improvement contracts; and to repeal sections 11-11-31, 40-22-20, 40-22-22, 40-22-23, 40-22-24, 40-22-25, 40-22-27, 40-22-30, 40-22-31, 40-22-32, 40-22-33, 40-22-34, 40-28-08, 40-29-08, 40-31-03, 48-01-01, 48-01-01.1, 48-01-02, 48-01-03, 48-01-04, 48-01-05, 48-01-06, 48-02-01, 48-02-02, 48-02-03, 48-02-04, 48-02-05, 48-02-05.1, 48-02-06, and 48-02-06.1 of the North Dakota Century Code, relating to public construction and public improvement contracts.

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

**SECTION 1. AMENDMENT.** Section 11-11-26 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**11-11-26. When board shall advertise for bids.** When Except as provided in chapters 48-01.1 and 48-02, when the amount to be paid during the current year for the erection of county buildings or for election ballots and supplies exceeds ten thousand dollars, the board of county commissioners shall cause an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in such other newspapers as it shall deem advisable. The first publication shall be made at least fifteen days ~~prior to~~ before the day set for the opening of the bids. For the purchase of fuel when the amount exceeds four thousand dollars, the board of county commissioners shall seek bids either by telephone solicitation from at least two suppliers, or by an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in ~~such~~ other newspapers as the board deems advisable.

**SECTION 2. AMENDMENT.** Section 15-47-15 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-15. School contracts - Advertisement for bids - Publication - Exceptions - Penalty.** Except as provided in this section, a school board may not enter into a contract involving the expenditure of an aggregate amount greater than eight

thousand dollars unless the school board has given ten days' notice by at least one publication in the official newspaper of the school district, received sealed bids, and accepted the bid of the lowest responsible bidder who in the opinion of the school board will best serve the interests of the school district. The provisions of this section do not apply to contracts for:

1. Personal services of employees of the district.
2. School text or reference books.
3. Articles not sold on the open market.
4. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
5. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
6. Building contracts under chapters 48-01.1 and 48-02.
7. School transportation services or fuel for vehicles the purchase of which is made by direct negotiation with a contractor using the procedure described in section 15-34.2-07.1.
8. The purchase of heating fuel which is made by direct negotiation with a contractor using the procedure described in section 15-34.2-07.1.

Such exceptions must be strictly construed. Any member of a school board who participates in a violation of this section is guilty of a class B misdemeanor.

**SECTION 3. AMENDMENT.** Section 25-01.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.1-33. Use of patient labor in erection or repair of buildings of institutions.** All work for the erection, repair, or improvement of buildings, grounds, or properties under the control of the supervising department must be let by contract, except that the work of patients in such institutions may be utilized if approved by the superintendent of such institution as having possible benefits to the patient and not detrimental to ~~his~~ the patient's health or treatment and where the use of such labor will not substantially depart from the requirements of ~~chapter chapters~~ 48-01.1 and 48-02.

**SECTION 4. AMENDMENT.** Section 39-03-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-08.1. Contracts - Bids.** Whenever the cost of any ~~improvement or the~~ purchase price of equipment or materials and supplies exceeds the sum of one thousand dollars, the department of the state highway patrol shall ~~proceed to~~ advertise the same, request bids, and award such contracts in the manner provided in sections 39-03-08.1, 39-03-08.2, 39-03-08.3, 39-03-08.4, and 39-03-08.5. Whenever any proposed contract or purchase of the state highway patrol is for a sum less than one thousand dollars, it is discretionary with the state highway patrol whether the same shall be awarded after advertising for bids. The department shall request bids from as many ~~contractors,~~ manufacturers; and dealers as can be requested conveniently.

**SECTION 5. AMENDMENT.** Section 40-22-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-22-06. Agreement with state agency, county, water resource district, or federal agency for certain improvements.** Any municipality in this state, through its governing body, may enter into an agreement with any state agency, the board of county commissioners, or water resource board of the county in which the municipality is located, or a joint water resource board which jurisdiction includes the municipality, or any federal agency, or any combination thereof, for the improvement of streets, sewers, water mains, flood control projects, or of any of such facilities, under the terms of which the contract for such work is to be let by the state agency, the board of county commissioners, water resource board, joint water resource board, the federal agency, or any combination thereof, and for this purpose may create a special improvement district or districts. No such agreement may be entered into until and unless the governing body certifies that it has obtained authority in accordance with this section to issue improvement warrants to finance the amount that the municipality will be obligated to pay thereunder, over and above the amount of any bonds which have been voted and any other funds which are on hand and properly available for such purpose. If any portion of the cost is to be paid by the levy of special assessments, the governing body shall by resolution declare the necessity of the improvement, setting forth its general nature, the approximate amount or fraction of the cost which the municipality will be obligated to pay under the agreement, and the fact that this amount, or such lesser amount as the governing body may specify, is proposed to be paid by the levy of special assessments upon property determined to be benefited by the improvement. Any portion of the cost for which the municipality is obligated and which is not assessed upon benefited property or paid from other funds may be agreed to be paid by general taxation of all the taxable property in the municipality, if approval for the incurring of such debt is obtained and provision for the payment thereof is made in accordance with section 40-24-10. The resolution of necessity must be published once each week for two consecutive weeks in the official newspaper of the municipality and ~~protest protests~~ may be filed and their sufficiency to bar the improvement must be determined in accordance with sections 40-22-16 through 40-22-18; except that if under the terms of the resolution of necessity the portion of the cost of the project to be assessed upon benefited property does not exceed twenty-five percent of the total cost to be paid by the state agency, county, water resource board, joint water resource board, federal agency, and municipality, written protests by the owners of seventy-five percent of the property liable to be assessed for the improvement shall be required to bar further proceedings with reference thereto. ~~In districts created under this section the governing body may dispense with all requirements, other than those herein stated, preliminary to the construction of an improvement by the special assessment method, including the preparation and approval of plans and specifications, advertisement for bids, and execution of contracts and bonds.~~ At any time after the period for filing protests has expired and the protests filed, if any, have been heard and determined to be insufficient, the governing body may issue warrants on the fund of the improvement in the total amount for which the municipality is obligated under the agreement, and may cause to be certified to the special assessment commission that portion of the cost to be borne by the property owners within the district, and the assessment of such amount may be made and such warrants may be issued as in other cases provided for in chapters 40-23 and 40-24.

**SECTION 6. AMENDMENT.** Section 40-22-19 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-19. Call for bids - Contents - Advertising Contract proposals.** Proposals for the work of making improvements provided for in this chapter shall must be advertised for by the governing body in the official newspaper of the municipality once each week for two consecutive weeks. The governing body may cause the work on two or more improvements to be combined in one advertisement and one contract awarded pursuant thereto. The advertisement for bids may be published at the same time as the resolution of necessity and shall:

- 1- Specify the work to be done according to the plans and specifications on file in the office of the city auditor;
- 2- Call for bids upon the basis of cash payment for the work;
- 3- Describe the several kinds of paving material if the governing body shall have required plans, specifications, and estimates for the improvement to be made for more than one kind of pavement;
- 4- State the time within which the bids will be received; and
- 5- State the time within which the work on the improvement is to be completed.

The governing body may require bidders to state also the rate of interest, not exceeding seven percent per annum, which the warrants to be received and accepted by the bidder at par in payment for the work shall bear. All other provisions for proposals under this chapter are governed by chapters 48-01.1 and 48-02.

**SECTION 7. AMENDMENT.** Section 40-22-29 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-22-29. Engineer's statement of estimated cost required - Governing body to enter into contracts.** Before adopting or rejecting any bid filed under the provisions of this chapter, the governing body shall require the engineer for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract to any bidder if the engineer's estimate prepared pursuant to this section exceeds the engineer's estimate prepared pursuant to section 40-22-10 by forty percent or more. If all bids are not rejected, the governing body shall award the contract to the lowest responsible bidder, upon the basis of cash payment for the work, if such bidder has furnished the certified check and bidder's bond required under the provisions of this chapter.

**SECTION 8. AMENDMENT.** Section 40-24-19 of the North Dakota Century Code is amended and reenacted as follows:

**40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments.** The municipality, at any time after making a contract or otherwise providing in accordance with section 40-22-27 for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality is responsible to the holders of the warrants or improvement bonds

for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement, for the acquisition of all land, easements, licenses, and permits required for such completion, and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. The issuance of the warrants or improvement bonds constitutes a representation and covenant binding upon the municipality, that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor, are not less than the aggregate amount of the special assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants or temporary improvement bonds must bear interest at a rate or rates and must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, are valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any bank or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision, including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies.

**SECTION 9. AMENDMENT.** Section 40-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-28-07. Bids for service connections - Advertising - Accompanied by check - Awarding - Returning checks.** The governing body shall direct the city auditor to advertise for bids in accordance with chapters 48-01.1 and 48-02 for the laying and

construction of service connections in accordance with the plans and specifications therefor. Each bid shall be accompanied by a separate envelope containing a certified or cashier's check in the amount of five hundred dollars to guarantee the entering into the contract if the contract is awarded to him. Bids shall be received by the governing body. The governing body may reject any or all bids for work on service connections and may readvertise for other bids. If all the bids are not rejected, the contract shall be awarded to the responsible bidder whose bid is the lowest upon the basis of cash payment for the work if such bidder has complied with all the requirements of this chapter and furnished the required bond. Upon the awarding of the contract, the checks of all unsuccessful bidders shall be returned to them.

**SECTION 10. AMENDMENT.** Section 40-29-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-29-07. Advertising for bids** ~~Bids for sidewalks - Making of bids.~~ The city auditor shall advertise in the official municipal newspaper once each week for two consecutive weeks for bids ~~Bids for the construction of the various kinds of sidewalks in the municipality.~~ The bids shall a city must be made in accordance with the specifications of the ordinance required by section 40-29-01 and shall be accompanied by a separate envelope containing a certified or cashier's check in the amount of fifty dollars in accordance with section 40-22-20, and by a separate envelope containing a bond in the amount of five hundred dollars conditioned as provided in section 40-22-23 chapters 48-01.1 and 48-02.

**SECTION 11. AMENDMENT.** Section 40-31-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-31-04. Letting contracts for curbing.** At least once every year that the city plans to construct or repair curbing or gutters, the city auditor shall advertise in the official newspaper of the city once each week for two consecutive weeks for bids for the construction of the various kinds of curbing in the city during the ensuing year. The solicit bids shall be made in accordance with the plans and specifications set out in the resolution or ordinance provided for in section 40-31-01. At a regular meeting of the governing body, the bids shall be received and opened and if accompanied by the requisite check, or check and bond, as required by the resolution of the governing body, the contract shall be awarded to the lowest responsible bidder. Contracts may be awarded to different bidders for the different kinds of curbing required chapters 48-01.1 and 48-02.

**SECTION 12. AMENDMENT.** Section 40-33.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**40-33.2-09. Construction contracts.** A city or municipal power agency may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities outside of its corporate limits or those of its members, or may contract with other public or private owners of these facilities to perform these functions, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment bonds. If a payment bond is secured as provided in chapter 48-01 48-02, it shall be is enforceable as therein provided, and no lien may be filed under chapter 35-27.

**SECTION 13. AMENDMENT.** Subsection 7 of section 40-33.3-06 of the North Dakota Century Code is amended and reenacted as follows:

7. May contract with any person for the construction of any project or for the sale, transmission, or distribution of liquids or of natural or synthetic gas by any project, or for any interest therein or any right to capacity thereof, upon such terms as the authority determines. If a payment bond is secured as provided in chapter ~~48-01~~ 48-02, no lien may be filed under chapter 35-27.

**SECTION 14. AMENDMENT.** Section 40-49-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-49-14. When yea and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board.** Yea and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and this shall be sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. ~~All~~ Except as provided in chapters 48-01.1 and 48-02, all contracts exceeding ten thousand dollars must be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body, in its discretion, may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

#### CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand, has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here \_\_\_\_\_

If signed for a firm or company,  
show authority on this line.

<sup>210</sup> **SECTION 15. AMENDMENT.** Section 43-07-11 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>210</sup> Section 43-07-11 was repealed by section 9 of Senate Bill No. 2168, chapter 397.



**43-07-11. Contractor's bond - Requirements.** Every contractor is required to execute and file with the application for license required by this chapter a good and valid bond issued by a surety company authorized to do business in this state or, in the case of class D contractors only, a personal bond with two sureties who are acceptable to the registrar and who are residents of this state. Every bond for a class A contractor must be written in the amount of two thousand dollars; bonds for class B, C, and D contractors must be in the amount of one thousand dollars, each running to the state of North Dakota and conditioned upon the payment of all taxes, including workers' compensation premiums under title 65, and unemployment compensation contributions due under chapters 52-01 through 52-07.1, all use taxes required to be paid by the contractor to the state of North Dakota and all income taxes withheld or required to be withheld from employees pursuant to chapter 57-38, which may accrue to the state of North Dakota or the political subdivisions thereof on account of the execution and performance of the construction contract or subcontract; provided that any bond required by this section is in addition to any bond required by ~~section 48-01-05~~ law and is also in addition to the obligation imposed by section 57-40.2-14 upon a surety company to the state of North Dakota. If any surety or bonding company or one or more sureties decides to terminate the contractor bond for any reason, the company or sureties shall give the bond recipient and secretary of state sixty days' notice before the termination takes effect. Every contractor upon making application for renewal of the contractor's license may not be required to furnish a contractor's bond; however, the secretary of state as registrar may not issue a certificate of renewal to any contractor upon notification by any department or agency of the state or political subdivision thereof, any secrecy provisions contained in the North Dakota tax laws notwithstanding, that the contractor has not paid a tax or other obligation presently due to the state of North Dakota or its political subdivisions. Upon notification that the contractor has been delinquent in the payment of any tax or other obligation to the state of North Dakota or the political subdivisions thereof, the secretary of state shall require the bond specified herein prior to the renewal of the license.

**SECTION 16.** Chapter 48-01.1 of the North Dakota Century Code is created and enacted as follows:

48-01.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Construction" includes repair and alteration.
2. "Contractor" means any person, duly licensed, that undertakes or enters into a contract with a governing body of the construction of any public improvement.
3. "Governing body" means the governing officer or board of any state entity or of any political subdivision.
4. "Public improvement" means any improvement the cost of which is payable from taxes or other funds under the control of a governing body including improvements for which special assessments are levied. The term does not include any county road construction and maintenance, state highway, or public service commission project governed by titles 11, 24, or 38.
5. "Surety" means a bond or undertaking executed by a surety company authorized to do business in this state which is countersigned by an agent of that company.

48-01.1-02. Contracts let to lowest bidder - Emergency waiver. A governing body shall award a contract for the construction of a public improvement under this chapter to the lowest responsible bidder. The governing body may reject any bid and readvertise for proposals if no bid is satisfactory, or if it believes any agreement has been entered into by the bidders or others to prevent competition. If the governing body determines that an emergency situation exists, a contract may be made without seeking bids.

48-01.1-03. Publication of advertisement for bids. If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of fifty thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks, the first publication to be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state.

48-01.1-04. Plans and specifications for public improvement contracts. If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of fifty thousand dollars, the governing body shall procure plans, drawings, and specifications for the work from a licensed architect or registered professional engineer. For public buildings in use by or to be used by the North Dakota agricultural experiment stations in connection with farm or agricultural research operations, the plans, drawings, and specifications may, with the approval of the board of higher education, be procured from a registered professional engineer if the engineer is in the regular employment of the agricultural experiment station.

48-01.1-05. Contents of advertisement. The advertisement for bids required by section 48-01.1-03 must state:

1. When and where the plans, drawings, and specifications may be seen and examined.
2. The place, date, and time the bids will be opened.
3. That each bid must be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of award, shall execute a contract in accordance with the terms of the bid and a contractor's bond as required by law and the regulations and determinations of the governing body. Countersignature of a bid bond is not required under this section.
4. That a bidder, except a bidder on a municipal, rural, and industrial water supply project authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], must be licensed for the full amount of the bid, as required by section 43-07-05. For projects authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder obtains a contractor's license for the full amount of its bid within twenty days after it is determined the bidder is the lowest and best bidder, the bid must be rejected and the contract awarded to the next lowest, best, and licensed bidder.

5. That no bid may be read or considered if it does not fully comply with the requirements of this section and that any deficient bid submitted must be resealed and returned to the bidder immediately.
6. That the right of the governing body to reject any bid is reserved.

48-01.1-06. Bid requirements for public buildings. Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract is in excess of fifty thousand dollars. The governing body may also allow submission of single prime bids or bids for other portions of the project at its discretion. The governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest and best multiple bids for the project.

48-01.1-07. Opening of bids - Award of contract. At the time and place specified in the notice, the governing body shall open publicly and read aloud all bids received and thereafter award the contract to the lowest and best bidder or reject all bids. The governing body may advertise for new bids in accordance with this chapter until a satisfactory bid is received. The governing body shall require the contractor to whom the contract is awarded to post a bond in accordance with chapter 48-02.

48-01.1-08. Coordination of work under multiple prime bids. After competitive bids for the general, electrical, and mechanical work are received as part of the multiple prime bids, the governing board may assign the electrical and mechanical contract and any other contracts to the general contractor for the project to facilitate the coordination and management of the work only.

**SECTION 17.** A new section to chapter 48-02 of the North Dakota Century Code is created and enacted as follows:

Bonds from contractors for public improvements. A governing body, as defined in section 48-01.1-01, authorized to enter into a contract for construction of a public improvement shall take from the contractor a bond before permitting any work to be done on that contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor and materials including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor, or any subcontractor, as provided in this chapter, may sue on the bond.

**SECTION 18. AMENDMENT.** Section 48-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

48-02-10.1. Advertising for bids. Advertisement for bids for such materials as are produced in North Dakota shall must be made in accordance with sections 48-02-03, 48-02-04, and 48-02-05 chapter 48-01.1, and may be included as a part of any advertisement for other items of the improvement. Each bid for furnishing materials produced in North Dakota shall be required to this state must contain the

bidder's certificate as to where the product is found, produced, or manufactured in the this state of North Dakota.

**SECTION 19. AMENDMENT.** Section 48-02-13 of the North Dakota Century Code is amended and reenacted as follows:

**48-02-13. Architects and superintendents engineers - Duties.** The governing ~~board~~ body shall employ the architect or engineer furnishing the plans as provided in this chapter, or some other suitable qualified person; ~~who shall be a practical mechanic and builder with four years experience, as superintendent of to provide construction of the work administration and construction observation services for which the plans and specifications are prepared, as provided by section 48-02-02 48-01.1-04. He shall have personal charge and supervision of the contractor on the work under the direction of the architect and the governing board employing him.~~ He The architect or engineer shall see that such contractor performs his the work in compliance with the plans and specifications adopted by such board. The architect or any other person, acting as such superintendent, shall engineer is entitled to receive a reasonable compensation to be fixed by such board the governing body. The duties imposed and powers conferred upon the governing ~~board body~~ by this chapter ~~shall apply to any other board hereafter created to succeed thereto successor to the governing body.~~

**SECTION 20. AMENDMENT.** Section 48-02-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**48-02-15. Claim for work or improvement - Suit on contractor's bond.** Any person who has furnished labor or material for any work or improvement for this state, any of its departments, or any school district, city, county, or township in the state in respect of which a bond is furnished under this chapter 48-01 and who has not been paid in full within ninety days after completion of his the contribution of labor or materials, ~~has the right to~~ may sue on such the bond for the amount unpaid at the time of institution of suit. However, any person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, does not have a claim for relief upon the bond unless ~~he that person~~ has given written notice to the contractor, within ninety days from the date on which the person completed his the contribution, stating with substantial accuracy the amount claimed and the name of the person for whom the contribution was performed. Each notice ~~shall must~~ must be served by registered mail, postage prepaid, in an envelope addressed to the contractor at any place ~~he the contractor~~ maintains an office, conducts his business, or has a residence.

The contracting body and the agent in charge of its office are authorized and directed to furnish a certified copy of the bond and the contract for which it was given to anyone making an application therefor who submits an affidavit that either ~~he the person~~ has supplied labor or materials for such work or improvement and that payment has not been made, or that ~~he the person~~ is being sued on any such the bond. Applicants shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

**SECTION 21. AMENDMENT.** Section 48-05-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**48-05-12. Competitive bidding and architect and engineering services.** Guaranteed energy savings contracts are not subject to the requirements of chapter

chapters 48-01.1 and 48-02, which relate to competitive bidding, and are not subject to section 43-19.1-28.

**SECTION 22. AMENDMENT.** Section 57-40.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-14. Contractor's performance bonds for payment of use tax.** For the purposes of this section the term "contractor" includes any ~~individual, firm, copartnership, association, corporation, limited liability company, person or other~~ group or combination thereof of persons acting as a unit; ~~and the plural as well as the singular number;~~ "subcontractor" includes any ~~individual, firm, copartnership, association, corporation, limited liability company, person or other~~ group or combination thereof of persons acting as a unit; ~~and the plural as well as the singular number,~~ who undertakes to perform all or any part of work covered by the original contract entered into by the contractor, including the furnishing of any supplies, materials, equipment, or any other tangible personal property; "surety" ~~shall mean~~ means a bond or undertaking executed by a surety company authorized to do business in ~~the this~~ state of North Dakota; and "surety company" means any person; ~~firm, corporation, or limited liability company~~ executing ~~such the~~ surety.

Whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement, or repair of real property in this state and the contractor or subcontractor furnishes surety for the faithful performance of such contract, there is hereby imposed the additional obligation upon the surety company to the state of North Dakota that said contractor or subcontractor shall promptly pay all use taxes which may accrue to the state of North Dakota under ~~the provisions~~ of this chapter. In the case of a contractor and ~~his the contractor's~~ surety company this additional obligation shall include liability to pay to the commissioner on purchases made by either the contractor or the subcontractor all such use taxes which have not been paid to a retailer authorized or required to collect such taxes; and the contractor or ~~his the contractor's~~ surety company is hereby authorized to ~~may~~ recover from the subcontractor the amount of any use taxes accruing with respect to purchases made by the subcontractor which the contractor or the surety company may be required to pay to the commissioner, or to withhold from the amount due the subcontractor under the subcontract an amount equal to any use taxes accruing with respect to purchases of the subcontractor which have not been paid by the subcontractor to the commissioner or to a retailer authorized or required to collect such taxes. Such liability on the part of the surety company ~~shall be is~~ limited to three percent of the amount of the contract price.

The surety company within sixty days after executing such surety shall send written notice of the same to the commissioner, which notice ~~shall must~~ give the names and addresses of the parties contracting with respect to the real property and the place where the contract is to be performed. After the completion of the contract and the acceptance of the improvement by the owner of the real property improved, the surety company shall give written notice of such completion and acceptance to the commissioner.

Six months after the completion of the contract and the acceptance of the improvement by the owner thereof, the additional obligation imposed upon ~~said the~~ surety company ~~shall cease ceases~~ unless written notice, within such period of time, of unpaid use taxes, is given to the surety company by the commissioner.

This section ~~shall does~~ not be construed to modify or repeal in any way any of the provisions of ~~sections 48-01-05 and 48-01-06~~ chapters 48-01.1 and 48-02.

**SECTION 23. AMENDMENT.** Section 61-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-07-09. Advertising for bids - Letting contract - Bond required.** After adopting a plan of irrigation works, the board shall give notice, by publication at least once, not less than fifteen days before bids are received, as provided in this chapter, in such newspaper or newspapers as it deems advisable, calling for bids for the construction of the work or any portion thereof. If less than the whole work is advertised, then the portion so advertised must be described particularly in such notice. The notice shall set forth that plans and specifications can be seen at the office of the board; that the board will receive sealed proposals therefor; that such proposals will be opened at the time and place fixed in the notice; and that the contract will be let to the lowest and best bidder. The proposals, at the time and place specified, shall be opened in public. As soon as convenient thereafter the board shall let such contract either in part or as a whole to the lowest and best bidder; or it may reject all bids and readvertise for proposals; or it may proceed to construct the work under its own superintendence with the labor of the residents of the district secure bids as provided in chapters 48-01.1 and 48-02. Contracts for the purchase of materials shall must be awarded to the lowest and best bidder. The person to whom a contract may be awarded shall furnish a bond with good and sufficient sureties, to be approved by the board, payable to such district for its use, in an amount at least equal to the contract price, conditioned for the faithful and complete performance of the contract. The work shall must be done under the direction and to the satisfaction of the engineer and shall must be approved by the board. The provisions of this This section shall does not apply in case of any contract between the district and the United States, or any department, bureau, or agency thereof, or with the state water commission.

**SECTION 24. AMENDMENT.** Section 61-12-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-12-25. Notice of construction - Letting of contracts.** After the order establishing a project has been entered, the board of flood irrigation shall advertise bids in accordance with chapters 48-01.1 and 48-02 for the construction of all work required, as shown by the plans and specifications on file. Such notice shall be published at least once a week for three successive weeks in the official newspaper of the county; and in such other papers or builder's bulletins as the board may order. Sealed bids shall be addressed to the board of flood irrigation and shall be opened publicly by it at a regular or special meeting designated in the notice. The contract for the construction of the work shall be let to the lowest responsible bidder; but the board may reject any or all bids submitted. At least fifteen days' time shall intervene between the hearing upon the review of the assessments and the letting of the contract. The successful bidder shall give a bond to the board of flood irrigation in a sum equal to the contract price, conditioned for the faithful performance of and compliance with the terms and conditions of said contract.

**SECTION 25. AMENDMENT.** Section 61-16.1-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-14. Contracts for construction or maintenance of project.** If the cost of construction or maintenance of a project does not exceed twenty-five fifty thousand dollars, the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of the construction or maintenance exceeds twenty-five fifty thousand dollars, the lowest and best bid must be accepted. The water resource board shall give at least ten days' notice of the time and place where the contract will be let. The notice must be published at least once

in a newspaper of general circulation in the district in which the work is to be carried on and must be mailed to any prospective bidders known to the water resource board.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the water resource board; conditioned upon the proper performance of the contract within the time specified by the contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section. The competitive bid requirement of this section may be waived, upon the determination of the water resource board that an emergency situation exists requiring the prompt repair of a project; and a contract may be made for the prompt repair of the project without seeking bids board must let a contract in accordance with chapters 48-01.1 and 48-02.

**SECTION 26. AMENDMENT.** Section 61-21-25 of the North Dakota Century Code is amended and reenacted as follows:

61-21-25. Letting of contracts for drains. The board shall let contracts for the construction of the drain, culverts, bridges and appurtenances thereto, or portions thereof at the appointed time and place to the lowest and best bidder. Any person receiving a contract for the construction of a drain or portions thereof shall give a performance bond in an amount set by the board for the proper construction of the work within the time specified in the contract. The board shall reserve the right to reject any and all bids and may postpone the letting of contracts for the construction of such drain or parts thereof from time to time or to such other time and place as the board may publicly announce. Any parties who are to be assessed for the construction of such drain may be bidders on construction contracts and, if equal bidders with other parties and equally well qualified, shall be preferred in awarding construction contracts. Any contracts for the construction of portions of a drain which are not let at the original contract letting may be let at a later time by the board after due notice as provided in section 61-21-24 and in accordance with the provisions of this section. If the board does not receive any acceptable bids after having advertised for the same upon two separate occasions, it may, at its sole and absolute discretion, negotiate a contract acceptable to it with the board of county commissioners of its county or any other party in accordance with chapters 48-01.1 and 48-02.

**SECTION 27. AMENDMENT.** Section 61-21-45 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-21-45. Contracts for work of cleaning and repairing drains. If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed ~~twenty-five~~ fifty thousand dollars in any one year, ~~such~~ the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such work exceeds ~~twenty-five~~ fifty thousand dollars in any one year, a contract must be let to the lowest and best bidder in the manner described in this chapter for the letting of bids for construction of drains. The board may reject any and all bids for the cleaning and repairing of drains and have such work performed by county equipment at the expense of the drainage district in accordance with chapters 48-01.1 and 48-02. The competitive bid requirement of this section is waived, upon the determination of the board that an emergency situation exists

requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

**SECTION 28. AMENDMENT.** Section 61-24.3-03.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor and services.** Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section ~~shall~~ does not apply to contracts that involve federal moneys where a preference would be contrary to federal laws or regulations, contracts covered under chapter 48-01.1, or to architect, engineer, professional right of way, and land surveying services.

**SECTION 29. REPEAL.** Sections 11-11-31, 40-22-20, 40-22-23, 40-22-24, 40-22-25, 40-22-31, 40-22-32, 40-22-33, 40-22-34, 40-28-08, 40-29-08, 40-31-03, 48-01-02, 48-01-03, 48-01-04, 48-01-05, 48-01-06, 48-02-01, and 48-02-05 of the North Dakota Century Code and sections 40-22-22, 40-22-27, 40-22-30, 48-01-01, 48-01-01.1, 48-02-02, 48-02-03, 48-02-04, 48-02-05.1, 48-02-06, and 48-02-06.1 of the 1993 Supplement to the North Dakota are repealed.

Approved April 7, 1995  
Filed April 7, 1995



# PUBLIC UTILITIES

## CHAPTER 444

### HOUSE BILL NO. 1373

(Representatives Keiser, Freier, Rydell, Tollefson)  
(Senators Goetz, Grindberg)

## PUBLIC UTILITY PURCHASES FROM AFFILIATED COMPANY COMPENSATION

AN ACT to amend and reenact sections 49-02-01.1 and 49-02-02 of the North Dakota Century Code, relating to the powers of the public service commission concerning public utilities and the sale of materials or services to a public utility by an affiliated company.

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

<sup>211</sup> **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative or mutual telecommunications company or is a telecommunications company having fewer than three thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative or mutual telecommunications company or has fewer than three thousand local exchange subscribers is subject to sections 49-21-01.4 and 49-21-08 and is subject to subsection 7 6 of section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

<sup>212</sup> **SECTION 2. AMENDMENT.** Section 49-02-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**49-02-02. Powers of public service commission with reference to public utilities.** The commission shall have power to:

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<sup>211</sup> Section 49-02-01.1 was also amended by section 1 of House Bill No. 1459, chapter 445.

<sup>212</sup> Section 49-02-02 was also amended by section 3 of Senate Bill No. 2008, chapter 30.

1. Investigate all methods and practices of public utilities or other persons, subject to the provisions of this title.
2. Require public utilities or other persons to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports, rates, classifications, schedules, and timetables in effect and used by such utilities or other persons and all other information desired by the commission relating to such investigations and requirements to be filed with the commission.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown therefor or on its own motion, and to provide notice thereof and to shorten the period for which notice must be given prior to hearing, when good cause exists for such action. Such notice, however, must be reasonable in view of the nature, scope, and importance of the hearing. Whenever it appears to the satisfaction of the commission that all of the interested parties have agreed concerning the matter at hand, or that no interested party has asked for a hearing, the commission may issue its order without a hearing.
6. ~~Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or services supplied for any public utility by any firm, corporation, or limited liability company owned or controlled directly or indirectly by the public utility or any affiliate, subsidiary, parent company, associate, or any corporation whose controlling stockholders are also controlling stockholders or controlling members of the public utility or any limited liability company whose controlling members are also controlling members or stockholders of the public utility; before permitting the value of said materials or services to be included in valuations or cost of operations for ratemaking purposes. If unreasonable profits have been made in any such transactions, valuations of said materials and services may be reduced accordingly.~~
7. 6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on rate increase applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any hearing or investigation must upon the order of the commission be paid by the public utility involved. The commission shall ascertain the costs and expenditures. After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility. The billing and order may be made from time to time during the hearing or investigation or at the conclusion thereof, as the commission determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment draw interest at the rate of

six percent per annum from the date of receipt of the order. All costs and expenses collected by the commission under this subsection must be deposited in the general fund in the state treasury.

- ~~8~~ 7. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes.
- ~~9~~ 8. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof, and to file such reports and promulgate rules as required by federal law or regulation for any purposes relating to the regulation of safety standards for pipeline facilities and the transportation associated with those pipeline facilities.

Approved March 31, 1995

Filed March 31, 1995

**CHAPTER 445****HOUSE BILL NO. 1459**

(Representatives Grosz, Mahoney)  
(Senators Christmann, Tomac)

**PUBLIC SERVICE COMMISSION JURISDICTION OVER  
TELECOMMUNICATIONS COMPANIES**

AN ACT to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to jurisdiction of the public service commission.

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

<sup>213</sup> **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative or mutual telecommunications company or is a telecommunications company having fewer than ~~three~~ eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative or mutual telecommunications company or has fewer than ~~three~~ eight thousand local exchange subscribers is subject to sections 49-21-01.4 and 49-21-08 and is subject to subsection 7 of section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

Approved April 4, 1995

Filed April 4, 1995

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<sup>213</sup> Section 49-02-01.1 was also amended by section 1 of House Bill No. 1373, chapter 444.

**CHAPTER 446****HOUSE BILL NO. 1312**

(Representatives Berg, Mahoney)

(Senators Freborg, Krauter)

**ENVIRONMENTAL EXTERNALITY VALUE USE  
PROHIBITED**

AN ACT to create and enact a new section to chapter 49-02 and a new section to chapter 49-06 of the North Dakota Century Code, relating to environmental externality values and when electric rates may not be increased; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

**Consideration of environmental externality values prohibited.** The commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service. Environmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. The alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

**SECTION 2.** A new section to chapter 49-06 of the North Dakota Century Code is created and enacted as follows:

**When electric rates not to be increased.** The commission may not increase electric rates as a result of actions taken by other states requiring higher cost resources to be built, purchased, or otherwise acquired as a result of the application of quantified environmental externality values, as defined in section 1 of this Act, as part of any resource selection process.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 10, 1995

Filed March 13, 1995

**CHAPTER 447****SENATE BILL NO. 2379**

(Senators Nething, Kinnoin, Mutch)  
(Representatives Berg, Soukup, Tollefson)

**PUBLIC UTILITY RATE FILING TEST YEARS**

AN ACT to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to test years a public utility may use in rate filings with the public service commission.

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

**SECTION 1.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Test year - Public utility rate filings.**

1. A public utility, at its option, may use any one of the following twelve-month periods as its test year for rate filings with the commission:
  - a. A historical test year, which may be either the latest twelve-month period for which actual data is available at the time of filing new schedules or the latest calendar or fiscal year for which actual data is available at the time of filing new schedules.
  - b. A current test year, which is any consecutive twelve-month period ending not later than twelve months after the date new schedules are filed. A public utility selecting a current test year also shall file data for the twelve-month period immediately preceding the current test year selected and that period is the "historical period" for the public utility.
  - c. A future test year, which is any consecutive twelve-month period ending no later than twenty-four months after the date new schedules are filed. A public utility selecting a future test year must file data for the twelve consecutive months immediately preceding the future test year and that period is the "current period" for the public utility.
2. A public utility selecting a current or future test year shall present the following information:
  - a. A comparison of forecast data to historical period data to demonstrate the reliability and accuracy of the utility's forecast including a comparison of the prior years' forecast or budgeted data to actual data for those periods.
  - b. A statement that the public utility's forecast is reasonable, reliable, and was made in good faith and that all basic assumptions used in making or supporting the forecast are reasonable, evaluated, identified, and justified to allow the commission to test the appropriateness of the forecast.

- c. A statement that the accounting treatment that has been applied to anticipated events and transactions in the forecast is the same as the accounting treatment to be applied in recording the events once they have occurred.
3. The public utility may update its filing for material changes as actual data becomes available up to thirty days before the hearing. Except for good cause shown, a public utility may not submit more than one updated filing before the hearing. In the absence of an updated filing by the public utility, the commission may require a public utility to update its filing when the commission staff introduces evidence that a material change has occurred.
4. A public utility may propose estimated or calculated adjustments to the selected historical or current test year for all known and measurable changes in operating results as measured in the test year. The adjustments must be made in the same context and format as the information was provided in the original filing. The adjustments may reflect material changes in plant investment, operating revenues, expenses, and capital structure if the changes occurred during the selected historical or current test year or are reasonably certain to occur subsequent to the selected test year within twelve months from the date of the rate filing.

Approved March 17, 1995

Filed March 17, 1995

**CHAPTER 448****SENATE BILL NO. 2456**

(Senators Yockim, Krebsbach, B. Stenehjem, Traynor)  
(Representatives Price, Tollefson)

**AMTRAK SERVICE RESTORATION AGREEMENTS**

AN ACT to amend and reenact section 49-10.1-17 of the North Dakota Century Code, relating to agreements to restore Amtrak service.

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

**SECTION 1. AMENDMENT.** Section 49-10.1-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**49-10.1-17. Agreements to restore Amtrak service.** The governor or the director of the department of transportation may make agreements in accordance with applicable federal law with the state of Montana and relevant federal agencies for the renewal of service on the Amtrak north coast Hiawatha route from Fargo to Spokane, Washington. The governor, the director of the department of transportation, or the director of the department of economic development and finance may enter agreements with any political subdivision, state, and federal agency for the restoration of daily service on the Amtrak Empire Builder route.

Approved March 17, 1995  
Filed March 20, 1995



**CHAPTER 449****HOUSE BILL NO. 1099**

(Representative Belter)

(At the request of the Governor)

**INTERMODAL TRANSPORTATION TEAM  
ELIMINATED**

AN ACT to amend and reenact subsection 1 of section 49-17.1-02 of the North Dakota Century Code, relating to the state intermodal transportation team.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 49-17.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Prepare and recommend a state plan for all rail transportation and local rail services ~~under the direction of an intermodal team appointed by the governor.~~

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 450****SENATE BILL NO. 2258**

(Senator Mutch)  
(Representative Timm)

**MOTOR CARRIER REGULATION REPEAL**

AN ACT to repeal section 39-04-20 and chapter 49-18 of the North Dakota Century Code, relating to motor carriers.

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

<sup>214</sup> **SECTION 1. REPEAL.** Section 39-04-20 and chapter 49-18 of the North Dakota Century Code are repealed.

Approved March 10, 1995

Filed March 13, 1995

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<sup>214</sup> Section 49-18-31 was amended by section 2 of House Bill No. 1058, chapter 243.

**CHAPTER 451****SENATE BILL NO. 2078**

(Legislative Council)

(Interim Regulatory Reform Review Commission)

(Senators Redlin, Nething)

(Representatives Tollefson, Mahoney)

**TELECOMMUNICATIONS REGULATION EXEMPTION**

AN ACT to amend and reenact subsection 4 of section 49-21-01.1 of the North Dakota Century Code, relating to services not subject to telecommunications regulations.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 49-21-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. ~~Home~~ Except as provided in section 49-21-01.5, home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 452

## HOUSE BILL NO. 1274

(Representatives Wentz, Martinson)  
(Senators Scherber, Yockim)

## TELEPHONE CALL IDENTIFICATION SERVICES

AN ACT to amend and reenact section 49-21-01.6 of the North Dakota Century Code, relating to telephone call identification services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.6 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.6. Call identification services - Charges prohibited - Notice - Exceptions.

1. Any telephone call identification service offered in this state by a telecommunications company ~~or rural telephone cooperative~~ must allow a caller; ~~at least on a per-call and a per-line basis;~~ to withhold; ~~at no cost to the caller;~~ display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller.
2. The A telecommunications company may not charge any caller person who requests that that person's telephone number be withheld from the recipient of any call placed by the caller the call identification services be blocked on a per-call basis. Per-line blocking must be provided without charge for residential customers and business customers with special needs, such as law enforcement and domestic violence agencies.
3. A telecommunications company ~~or rural telephone cooperative~~ offering a call identification service shall notify its subscribers that their calls may be identified to a called party at least thirty days before the service is offered. ~~In the case of a telecommunications company or rural telephone cooperative presently offering a call identification service, notice must be given within thirty days of July 17, 1991.~~
4. This section does not apply to:
  - a. An identification service that is used within the same limited system, including a Centrex, Centron, or private branch exchange (PBX) system, as the recipient telephone.
  - b. An identification service that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (911).
  - c. An identification service provided in connection with legally sanctioned call tracing or tapping procedures.

- d. An identification service provided in connection with any "700", "800", or "900" access code telecommunications service, or any voice or data store and forward service.
- e. Any other service that, after investigation by the commission, the commission finds that a nondisclosure or similar agreement will protect the privacy interests of a calling party.

Approved March 28, 1995

Filed March 29, 1995

**CHAPTER 453****SENATE BILL NO. 2079**

(Legislative Council)

(Interim Regulatory Reform Review Commission)

(Senators Redlin, Nething)

(Representatives Tollefson, Mahoney)

**REGULATORY REFORM REVIEW COMMISSION**

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to the regulatory reform review commission; to provide an expiration date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

**Regulatory reform review commission - Appointments - Compensation - Report to legislative council.** The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1995 and 1999 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 1996 and 1998. The regulatory reform review commission may review the effect of taxation laws on North Dakota telecommunications law during the interims between the 1995 and 1999 legislative sessions and may include any findings and recommendations with respect to its review of the effect of taxation laws on North Dakota telecommunications law in the report to the legislative council in 1996 and 1998. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council under section 54-35-10. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and of the public service commission staff providing technical assistance while carrying out their duties.

**SECTION 2. EXPIRATION DATE.** This Act is effective through December 31, 1998, and after that date is ineffective.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 15, 1995

Filed March 15, 1995

## CHAPTER 454

### SENATE BILL NO. 2109

(Natural Resources Committee)

(At the request of the Public Service Commission)

## ENERGY CONVERSION AND TRANSMISSION FACILITY INVENTORIES

AN ACT to amend and reenact sections 49-22-04 and 49-22-05.1 of the North Dakota Century Code, relating to energy conversion and transmission facility inventories of exclusion and avoidance areas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-04. Ten-year plans - Contents.** Every utility ~~which~~ that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall annually develop a ten-year plan as specified in this section. On or before July first of each year, ~~every such~~ the utility shall submit its ten-year plan to the commission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and ~~shall~~ must contain the following information:

1. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
2. An identification of the location of the tentative preferred site for all energy conversion facilities and the tentative location of all transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor identification shall be made in compliance with the inventory criteria published by the commission pursuant to section 49-22-05.1.
3. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
4. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
5. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with ~~such~~ that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.
6. Any other relevant information as may be requested by the commission.

Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state of North Dakota, to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

**SECTION 2. AMENDMENT.** Section 49-22-05.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**49-22-05.1. ~~Inventory of exclusion~~ Exclusion and avoidance areas - Criteria.**

- ~~1. The commission shall assemble and publish an energy conversion and transmission facility inventory of exclusion and avoidance areas. The commission shall have a continuing responsibility to evaluate, update, and publish its inventory.~~
- ~~2. The commission shall develop criteria which shall to be used in identifying exclusion and avoidance areas and which shall to guide the site, corridor, and route suitability evaluation and designation process. Except for transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.~~

Approved March 17, 1995

Filed March 20, 1995



**CHAPTER 455****SENATE BILL NO. 2359**

(Senators St. Aubyn, Tomac)  
(Representatives Mahoney, Payne)

**ONE-CALL EXCAVATION NOTICE SYSTEM**

AN ACT to create a one-call excavation notice system; to repeal sections 11-18-16, 11-18-17, 11-18-18, 11-18-19, and 11-18-20 of the North Dakota Century Code, relating to buried transmission facilities; to provide a penalty; and to provide an effective date.

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

**SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

1. "Abandoned" means no longer in service and physically disconnected from a portion of the facility or from any other facility that is in use or still carries services.
2. "Board" means the board of directors of the nonprofit corporation governing the notification center under section 3 of this Act.
3. "Careful and prudent manner" means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint, or other customary manner, and supporting and protecting the uncovered facility.
4. "Damage" means:
  - a. Substantial weakening of structural or lateral support of an underground facility;
  - b. Penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or
  - c. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.
5. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
6. "Emergency responder" means a fire department, a law enforcement officer, or other emergency rescue service.
7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and

includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:

- a. Opening a grave in a cemetery.
  - b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
  - c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
  - d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
  - e. Normal repair and maintenance of track and track bed by a railroad on its own right-of-way.
8. "Excavator" means a person who conducts excavation.
  9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is observed on the preceding Friday as if the Friday were the holiday, and when a holiday falls on a Sunday, it is observed on the following Monday as if the Monday were the actual holiday.
  10. "Local governmental unit" means a county, township, or city.
  11. "Locate" means an operator's markings of an underground facility.
  12. "Nonprofit corporation" means a corporation established under chapters 10-24 through 10-28.
  13. "Notification center" means a center that receives notice from an excavator of planned excavation or any other request for location and transmits this notice to a participating operator.
  14. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local government entity. The department of transportation is not considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.
  15. "Underground facility" means an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities

which do not extend beyond the boundary of the private property are excluded.

16. "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.
17. "Water" includes potable water, wastewater, and storm water.

**SECTION 2. Notice to excavators and underground facility operators.** A local governmental entity that issues permits for an activity involving excavation shall display an excavator's and operator's notice at the location where permits are obtained. An excavator's and operator's notice and a copy of this Act must be furnished to each person obtaining a permit for excavation. The notification center shall prescribe an excavator's and operator's notice. The notice must inform excavators and operators of their obligation to comply with this Act. The center shall furnish to local governmental units:

1. A copy of the notice and this Act;
2. A copy of the display required under this section; and
3. The telephone number and mailing address of the notification center.

**SECTION 3. Notification center - Participation - Establishment.**

1. An operator shall participate in and share in the costs of the statewide notification center operated by a vendor selected under this section.
2. An excavator licensed under this chapter shall participate in and share in the costs of a statewide notification center on a per call basis. An operator, installing the operator's own facilities, may not be charged as an excavator.
3. An operator shall participate in and share the costs of the one-call excavation notice system by:
  - a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity;
  - b. Updating the information provided to the notification center on a timely basis;
  - c. Installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
  - d. Paying the costs charged by the notification center on a timely basis; and
  - e. Receiving and responding to excavation notices, including emergency notices.
4. A nonprofit corporation shall govern the notification center. The initial incorporators of the corporation may solicit bids for any services provided for the operation of the center. The corporation shall provide

advance notice of the first organizational meeting by publication in qualified legal newspapers and in appropriate trade journals and by written notice to all appropriate trade associations.

- a. The nonprofit corporation must be incorporated by seventeen initial incorporators, with one member representing the house of representatives and one member representing the senate appointed by the legislative council, one member representing telecommunications companies offering local exchange service to fewer than fifty thousand subscribers, one member representing telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunication services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as provided for members of committees of the legislative council under section 54-35-10. The legislative council shall pay the compensation for the legislative members.
- b. The initial incorporators shall establish, before August 1, 1996, a board of directors of the nonprofit corporation which consists of eight members representing the participants in the center. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids, if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.
- c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to the negligence of the board member or agent.
- d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction

to enjoin violations of this chapter without proof that anyone suffered actual damages.

- e. The notification center must be in operation by August 1, 1997.

#### **SECTION 4. Excavation.**

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice. The notice must contain:
  - a. The name, address, and telephone number of the person making the notification;
  - b. The name, address, and telephone number of the excavator;
  - c. The date and time when excavation is scheduled to begin;
  - d. The depth of planned excavation;
  - e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
  - f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
  - g. The location of the excavation by any one or more of the following means:
    - (1) A specific street address;
    - (2) A reference to a platted lot number of record; or
    - (3) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.
2. The notification center shall:
  - a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.
  - b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.

- c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given.
  - d. Establish procedures for assuring positive response from the affected operator in all emergency excavation notices.
3. a. An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.
- b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. This subdivision does not apply to an underground facility to convey water.
- c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.
- d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.
- e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.
- f. After facilities are located by an operator, an excavator shall notify the notification center if:
- (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
  - (2) The markings have been obliterated or obscured;
  - (3) Weather conditions have impeded visibility of the markings;
  - (4) The site shows evidence of recent excavation; or
  - (5) The excavator has other reason to believe the markings are incorrect or missing.
- g. An excavator may not use a location more than seventy-two hours, or any extension of that period, after the planned excavation date



personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.

- b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
    - c. An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.
  2.
    - a. If an excavator damages an underground facility, the excavator is liable for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
    - b. Reimbursement to the operator is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 3 and 4 of this Act.
  3. It is prima facie evidence of the excavator's negligence in a claim for relief if damage to the underground facilities of an operator resulted from excavation and the excavator failed to give an excavation notice under section 4 or provide support as required by section 5.

**SECTION 7. Effect on local ordinances.** A person with a permit for excavation from the state or a local governmental unit is subject to this chapter. This chapter does not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.

**SECTION 8. REPEAL.** Sections 11-18-17, 11-18-18, and 11-18-19 of the North Dakota Century Code and sections 11-18-16 and 11-18-20 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 9. EFFECTIVE DATE.** Sections 2, 4, 6, 7, and 8 of this Act become effective on August 1, 1997. Beginning August 1, 1996, operators and excavators shall plat locations and provide information to the board and the one-call notification center to enable the one-call notification center to begin operating on August 1, 1997.

Approved April 6, 1995  
Filed April 6, 1995



# PUBLIC WELFARE

## CHAPTER 456

### SENATE BILL NO. 2037

(Legislative Council)

(Interim Budget Committee on Human Services)

(Senators Thane, Mathern, DeMers)

(Representatives Poolman, Gerntholz)

## COUNTY POOR RELIEF STATUTORY CHANGES

AN ACT to create and enact four new sections to chapter 50-01 and a new chapter to title 50 of the North Dakota Century Code, relating to residency for county general assistance purposes and county social service boards; to amend and reenact sections 14-08.1-04, 14-09-10, 23-06-03, 30-16-04, 50-01-01, 50-01-01.1, 50-01-02, 50-01-03, 50-01-04, 50-01-13, 50-01-17, 50-01-17.1, 50-01-17.5, 50-01-19, 50-01-21, 50-01.1-04, 50-06-06.1, subsection 2 of section 50-06.2-02, sections 50-24.5-03, 50-24.5-06, 50-24.5-07, and subsection 15 of section 65-01-02 of the North Dakota Century Code, relating to poor relief and basic care assistance payments; and to repeal sections 50-01-05, 50-01-06, 50-01-07, 50-01-07.1, 50-01-08, 50-01-08.1, 50-01-09, 50-01-09.1, 50-01-10, 50-01-12, 50-01-14, 50-01-15, 50-01-16, 50-01-20, 50-01-22, and chapter 50-02 of the North Dakota Century Code, relating to poor relief.

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

**SECTION 1. AMENDMENT.** Section 14-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**14-08.1-04. Duty of state's attorney.** Upon request of the county social service board director or the executive director of the department of human services, the state's attorney of any county furnishing public assistance or poor relief county general assistance shall commence any appropriate action or proceeding under sections 14-08.1-02 and 14-08.1-03, in which case fees for filing and service of process may not be charged or collected.

**SECTION 2. AMENDMENT.** Section 14-09-10 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-10. Reciprocal duty of support - Support of poor.** It is the duty of the father, the mother, and ~~the children~~ every child of any ~~poor~~ person who is unable to ~~maintain himself by work~~ support oneself, to maintain ~~such~~ that person to the extent of the ability of ~~such father, mother, or children~~ each. ~~Such~~ This liability may be enforced by any person furnishing necessities to ~~such poor~~ the person. The promise of an adult ~~son or daughter~~ child to pay for necessities ~~previously~~ furnished to ~~such~~ the child's parent is binding.

<sup>215</sup> **SECTION 3. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If the deceased was married, upon the surviving husband or wife.
2. If the deceased was not married but left kindred, upon the person or persons in the same degree, of adult age, nearest of kin to the deceased ~~living within the state~~ and possessed of sufficient means to defray the necessary expenses.
3. ~~In case~~ If the person ~~upon whom~~ who has the duty of burial is ~~east by the foregoing provisions omits to make such burial~~ does not bury the body within the time required by this chapter, ~~upon~~ the person next specified shall bury the body. ~~If all omit to act, upon the tenant, or if there is no tenant, upon the owner of the premises in which the death occurs or the body is found.~~
4. If the deceased is not survived by ~~no~~ a person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for ~~poor relief county general assistance~~ purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial. The county social service board shall pay the cost of the burial ~~must be paid by the county social service board~~, subject to the following:
  - a. The sum of eight hundred dollars must be allowed for personal property and burial services furnished by a funeral director or funeral home.
  - b. The reasonable costs of transporting the body to the place of burial, but not exceeding one hundred dollars.
  - c. The cost of the grave box or vault, not to exceed the sum of two hundred thirty-five dollars, provided that a grave box or vault is required by the cemetery before a burial may be made.
  - d. The cost of a grave space, not to exceed the sum of one hundred seventy-five dollars.
  - e. Any grave opening and closing expenses, not to exceed the sum of one hundred seventy-five dollars.

Payment for services rendered or personal property furnished under subdivisions a, b, and c must be made to the funeral home or funeral director furnishing the ~~same~~ services or property, while payment for a

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<sup>215</sup> Section 23-06-03 was also amended by section 1 of House Bill No. 1300, chapter 252.

grave space, services rendered, or personal property furnished under subdivisions d and e must be made to the cemetery furnishing the same services or property.

**SECTION 4. AMENDMENT.** Section 30-16-04 of the North Dakota Century Code is amended and reenacted as follows:

**30-16-04. Descent and distribution of real property subject to homestead estate.** The real property subjected to the homestead estate ~~shall descend~~ descends, subject to the full satisfaction of ~~such that~~ that estate, exempt from decedent's debts except claims in favor of the county for poor relief county general assistance and also for claims of the state of North Dakota for repayment of old-age assistance and aid to the permanently and totally disabled and as otherwise provided in section 47-18-04, and ~~shall must~~ be distributed in the manner in which real property not subjected to a homestead estate is distributed or as directed in the decedent's will; ~~but in no case shall the.~~ The real property constituting the homestead of a decedent, or any part thereof, may not descend or be distributed to any person other than the surviving ~~husband or wife~~ spouse and decedent's heirs in the direct descending line as prescribed in title 30.1 until all the decedent's debts are fully paid.

**SECTION 5. AMENDMENT.** Section 50-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-01-01. County obligated to support poor - Eligibility for assistance - Transfer of property as security for assistance.** Within the limits of the county human services appropriation ~~therefor~~, each county in this state is obligated, upon receipt of a written application on a form prescribed by the department of human services, to relieve and support, to provide county general assistance to persons who are residents of the county and who are in need of poor relief eligible. To be eligible for ~~such relief~~ county general assistance, the applicant:

1. May not ~~at any time before or after making application for county poor relief have made, before or after making an application for county general assistance,~~ an assignment or transfer of property for the purpose of rendering the applicant eligible for assistance ~~under this chapter~~.
2. Shall comply with the written eligibility standards for county poor relief general assistance established by the county social service board. A copy of the written standards must be available upon request. Pursuant to this requirement, the ownership of ~~real or personal~~ property by an applicant for county poor relief general assistance, or by the spouse of the applicant, either individually or jointly, or of insurance on the life of the applicant does not preclude the granting of the relief assistance if the applicant is without funds for the applicant's support. ~~However, as~~ As a condition to the granting of county poor relief general assistance, however, the applicant may be required to transfer ~~such the~~ property in trust by appropriate instrument as security for relief the applicant may ~~thereafter~~ receive, unless the property consists of one of the following:
  - a. A homestead.
  - b. A life insurance policy having a cash surrender value of less than three hundred dollars.

- c. Personal property of a value less than three hundred dollars, not including household goods, wearing apparel, and personal effects, such as money.
- d. Property selected by the applicant having a value of less than three hundred dollars.
- e. Real or personal property held in trust for the applicant by the federal government.
- f. Real or personal property on which the taking of security may be prohibited through legislation enacted by the Congress of the United States.

**SECTION 6. AMENDMENT.** Section 50-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-01.1. Determination of eligibility - Notice - Appeal.** The director of the county social service board, or an individual designated by the county social service board, is responsible for determining, within a reasonable period of time, an applicant's eligibility for relief county general assistance under this chapter. ~~Applicants~~ The applicant must be provided written notice of the determination; ~~such.~~ The notice to must include the reasons for ~~such the~~ determination, as well as an explanation of the applicant's right to a timely appeal of the determination to the county social service board if aggrieved by the decision. Decisions of the county social service board regarding appeals taken pursuant to this section are subject to judicial review in the manner prescribed by chapter 28-32.

**SECTION 7. AMENDMENT.** Section 50-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-02. Poor relief County general assistance jurisdiction.** The county social service board of each county ~~shall have~~ has exclusive jurisdiction and control of the administration of poor relief county general assistance within the county, except as otherwise provided in this title.

**SECTION 8. AMENDMENT.** Section 50-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-03. Powers of county County social service board may accept property or security.** In cases where it seems desirable, the county social service board may accept property or security from a person receiving or in need of relief county general assistance.

**SECTION 9. AMENDMENT.** Section 50-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-04. Record of relief given Records to be kept.** Every person who administers ~~relief from the public funds to the poor, sick, and needy, who are not inmates of a public institution, shall keep a record in which must be entered the following:~~

- 1- ~~The full name, age, sex, color, whether married or single, and nationality of every person to whom relief is given.~~
- 2- ~~The date the relief is given.~~

- 3- The amount of relief given; if it is in the form of money.
- 4- The value and kind of relief given; if it is in the form of articles of use or value.
- 5- If the relief is given to a person for the use of others:
  - a- If the relief is restricted to a single family, the number of recipients of relief and the age and sex of each.
  - b- The name, age, sex, color, and nationality of each person partaking of the relief who is not a member of the family of the person into whose hands the relief is given.
- 6- The reason the relief is given county general assistance shall maintain reasonable records.

<sup>216</sup> SECTION 10. AMENDMENT. Section 50-01-13 of the North Dakota Century Code is amended and reenacted as follows:

50-01-13. Medical attention and hospitalization furnished poor. In case of necessity, the county social service board promptly shall provide medical ~~and surgical~~ attention for any poor person in the county who is not provided for in a public institution. ~~In a county where a county physician has been appointed on an annual salary, such physician must be called to attend such poor person.~~ The county social service board shall cause to be furnished to ~~such poor the~~ person the medicines prescribed by ~~the~~ a physician. In all cases where, in the opinion of the county social service board, hospitalization is necessary, it must be furnished by the county upon approval or subsequent ratification ~~by the county physician and the board, or by the board in a county having no county physician.~~ Where such ~~If the~~ poor person is a nonresident of the state, the county furnishing such the medical ~~or surgical~~ attention ~~from and after January 2, 1951,~~ must be reimbursed within the limits of funds appropriated for such that purpose by the legislative assembly for eighty percent of the expenses incurred in carrying out ~~the provisions of~~ this section. ~~Such~~ The reimbursement must be made upon vouchers having the approval of the department of human services.

SECTION 11. AMENDMENT. Section 50-01-17 of the North Dakota Century Code is amended and reenacted as follows:

50-01-17. ~~Poor persons~~ Person required to work. If a ~~poor~~ person applying for ~~poor relief~~ county general assistance is ~~in good health~~ able to work, or if any ~~members~~ member of ~~his~~ that person's family ~~are in good health~~ is able to work, the county social service board of the county in which ~~such poor the~~ person is a resident ~~shall may~~ insist that those able to ~~labor shall~~ work seek employment and ~~such the~~ board ~~shall may~~ refuse to furnish any ~~aid~~ assistance until it is satisfied that the person claiming help assistance is endeavoring to find work for himself. The board ~~shall make all possible effort may attempt~~ to secure, for ~~an able-bodied a~~ person claiming poor relief county general assistance, who is able to work, employment in

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<sup>216</sup> Section 50-01-13 was also amended by section 13 of Senate Bill No. 2012, chapter 34.

the county where ~~he~~ the person resides and may call upon residents of the county to aid it the board in finding work for ~~such~~ that person.

**SECTION 12. AMENDMENT.** Section 50-01-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-17.1. Work requirement conditions.** If a person applying for ~~poor relief county general assistance~~ is in good health able to work, the county social service board, at its option, may, ~~at its option~~, require the applicant to comply with any or all of the following provisions as a condition to receiving public assistance:

1. To register with job service North Dakota.
2. To participate in work incentive programs in accordance with the guidelines established for ~~aid to families with dependent children~~ public assistance programs.
3. To accept work which is available through community work experience programs.

**SECTION 13. AMENDMENT.** Section 50-01-17.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-17.5. Refusal to comply with work requirements - Denial of relief.** Refusal of any applicant or recipient, without good cause, to comply with any work requirements established pursuant to this chapter may be grounds for denial or termination of ~~poor relief~~ county general assistance.

**SECTION 14. AMENDMENT.** Section 50-01-19 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-19. Duty of relative to aid - Right of recovery by county.** The father, the mother, and ~~the children~~ every child of any ~~poor~~ person who is eligible for county general assistance and who is unable to maintain himself by work to support oneself shall maintain ~~such~~ that person to the extent of their ~~the~~ ability of each. The county may recover for necessities furnished to an indigent person from ~~his~~ that person's father, mother, or adult children.

**SECTION 15. AMENDMENT.** Section 50-01-21 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-21. County has preferred claim against estate of recipient of ~~poor relief~~ county general assistance.** ~~County funds~~ Funds used for subsistence, medical, hospital, or burial expenses of a recipient of county ~~indigent~~ general assistance may not be considered as gifts, and the county ~~shall have~~ has a preferred claim against the estate of any person who has received county general assistance for funds expended for ~~such~~ that person and ~~his~~ that person's legal dependents. The statute of limitations does not run on ~~any such~~ this type of claim.

**SECTION 16.** Four new sections to chapter 50-01 of the North Dakota Century Code are created and enacted as follows:

County of residence for county general assistance purposes. A person who has residence in this state, for county general assistance purposes, is a resident of the county in which the person is living on other than a temporary basis. If a person is

living in a county on a temporary basis, the person is a resident of the county in which the person most recently lived other than on a temporary basis.

State of residence for county general assistance purposes. A person who is a resident of this state for purposes of chapter 50-24.5 is a resident of this state for county general assistance purposes. If a person moves from this state for other than a temporary purpose, the person's residency in this state for county general assistance purposes is lost. Residency in this state is presumed lost if:

1. The person plans to be absent or has been absent from this state for one year or longer; or
2. The person receives any form of public assistance, while in another state, which is available only to residents of that state.

Change of residence to another county. When a person who is receiving county general assistance in one county becomes a resident of another county in this state, the county from which the person moves shall forward appropriate records and files to the new county of residence.

Persons with uncertain residence. If the residence of a person is uncertain for county general assistance purposes, the county in which the person lives shall provide county general assistance until that person's residence is determined.

**SECTION 17. AMENDMENT.** Section 50-01.1-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-04. Plan - Financing - Distribution of property - Governing board - Compensation of members.**

1. A plan for the creation of a multicounty social service district must describe the method of operation of the district office, its administration, its location and the location of any ancillary offices, the disbursements from public funds, and the accountability for funds and manner of reporting receipts and disbursements. The plan must provide that all services provided by county officials to county agencies under this code ~~must~~ be provided by those county officials residing within the same county ~~wherein in which~~ the district office of the multicounty social service district is located. The plan must also provide for the distribution of property owned by each of the county agencies affected by the consolidation; and for the method of resolution of any disagreement between the boards of county commissioners involved in the multicounty district or between the governing board and one or more boards of county commissioners. The plan, once approved, may be continued for a definite term or until rescinded or terminated in accordance with its terms. The plan ~~also may also~~ provide that the regional director of a regional human service center ~~shall serve~~ serves as the director of the multicounty social service district.
2. The governing board of the multicounty social service district annually shall prepare a proposed budget for the district at the time and in the manner in which a county budget is adopted and shall submit the proposed budget to the board of county commissioners of each county in the district for approval. The amount budgeted and approved must be sufficient to defray the anticipated expenses of administration and the delivery of social and economic assistance services, exclusive of grants,

and must be prorated among the counties based on an agreed-to cost distribution formula that takes into consideration such factors as caseload, population, taxable valuation, and geographical area of the respective counties comprising the district. Within ten days following approval of the proposed budget by the boards of county commissioners, the governing board of the district shall certify the budget to the respective county auditors of the counties in the district, and this amount must be included in the levies of the counties. Each board of county commissioners also shall budget and approve amounts sufficient to defray that county's anticipated costs of ~~poor relief~~ county general assistance and that county's share of grants as provided under this title. The amounts budgeted and approved by the several boards of county commissioners must be periodically deposited with the treasurer of the county in which the district office is located, as ~~may be~~ requested by the treasurer, and must be placed in a special multicounty social service district fund. The governing board, or its president and secretary when authorized by the governing board, shall audit all claims against the fund. The governing board at its regularly scheduled meeting shall approve or ratify all claims against the fund. The county treasurer shall pay approved or ratified claims from the fund. Unexpended funds remaining at the end of a fiscal year may be carried over to the next fiscal year.

3. The governing board of a multicounty social service district consists of not more than fifteen members, as determined by the plan. The plan must ~~provide that there must be appointed as members to the board from each respective county, the number of members in establish a method of determining the number of members that will be appointed by each county within the multicounty social service district. The method may consider~~ the ratio that each county's population bears to the total population of the multicounty social service district, ~~the ratio of current social service caseload, or other equitable factors; provided, that each county to be included in the district must be represented by at least one board member. The board of county commissioners of each county within the multicounty social service district shall make the appointments to the governing board. Members must be appointed for a term of three years, or until a successor has been appointed and qualifies. However, the~~ The members appointed to the initial governing board of a multicounty district, however, must be appointed to staggered terms determined ~~in accordance with~~ according to the plan approved pursuant to section 50-01.1-03. Each member of the governing board shall qualify by taking the oath prescribed for civil officers and by filing the oath with the county auditor of the county of residence. No person may serve as a board member for more than three consecutive three-year terms. Each sex must be fairly represented on the board, and each county must be represented on the board by at least one county commissioner of that county. Members shall elect from the governing board a president, a secretary, and other officers as the board ~~deems~~ determines necessary.
4. Each member of the governing board is entitled to receive forty-five dollars per day, not to exceed forty-five days in any calendar year, for each day necessarily spent in the performance of official duties. In addition, each member is entitled to be paid for mileage and actual expenses incurred in attending meetings and in the performance of official duties in the amounts provided by law for state officials.



**SECTION 18.** A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

County social service board - Members - Qualifications. Each board of county commissioners shall establish a county social service board consisting of five, seven, or nine members of which one or more must be members of the board of county commissioners. The board of county commissioners shall appoint the members of the county social service board based upon fitness to serve as members by reason of character, experience, and training without regard to political affiliation. The board must include members of each sex.

Members of county social service board - Term of office - Oath - Compensation. The members of the county social service board serve a term of three years or until their successors have duly qualified. Terms of office must be arranged so the term of office of one member expires in one year, the term of one-half the remaining members the next year, and the term of the remaining members the third year. Each member of the board qualifies by taking the oath provided for civil officers. The oath must be filed with the county auditor. The members of the county social service board are entitled to receive, in addition to any salaries they receive from any other source, from the state or county or any municipality, a sum not to exceed forty-five dollars per day for time actually spent in transacting the business of the board. The county shall reimburse members for expenses actually incurred in the performance of their official duties and for mileage at the legal rate for necessary travel.

Duties of county social service board. The county social service board of each county in this state shall:

1. Supervise and direct all human service activities conducted by the county including county general assistance or other public assistance.
2. Supervise and administer, under the direction and supervision of the department of human services, human services in the county which are financed in whole or in part with funds allocated or distributed by the department of human services.
3. Aid and assist in every reasonable way to efficiently coordinate and conduct human service activities within the county by private as well as public organizations.
4. Subject to subsection 17 of section 50-06-05.1, administer the food stamp program in the county under the direction and supervision of the department of human services in conformity with the Food Stamp Act of 1964, as amended, and enter into an agreement for administering the food stamp program with the department of human services.
5. Subject to subsection 19 of section 50-06-05.1, administer the energy assistance program in the county under the direction and supervision of the department of human services and to enter into an agreement for administering the energy assistance program with the department of human services.
6. Charge and collect fees and expenses for services provided by its staff in accordance with policies and fee schedules adopted by the department of human services.

Removal of members of the board. The board of county commissioners may adopt a resolution to remove a member of the county social service board without cause.

Actions and proceedings - Duty of state's attorney. Any suit or other proceeding arising out of the administration of the laws pertaining to the support of persons eligible for county general assistance must be brought by or against the county in its corporate name. The state's attorney shall institute and conduct or defend any and all actions or proceedings that may be instituted under chapter 50-01.

**SECTION 19. AMENDMENT.** Section 50-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-06.1. Indians - General assistance contract authorized.** The department is authorized to may execute contracts or agreements with the government of the United States or the appropriate federal agency ~~thereof for the purpose of making available to make~~ the services of the state and counties of the state available in providing general welfare assistance or ~~poor relief in accordance with the provisions of chapters~~ county general assistance under chapter 50-01 and 50-02, to Indian citizens in all counties of the state in which no Indian reservation or ~~portion thereof~~ part of an Indian reservation is located. ~~Such~~ The contracts must provide that any Indian citizen of this state ~~having who has~~ a residence on a reservation located in ~~North Dakota this state~~ or in any county of the state containing an Indian reservation or ~~portion thereof~~ part of an Indian reservation, and who has not acquired a residence for welfare purposes as required by the public welfare laws of this state in another county not containing an Indian reservation or ~~portion thereof~~ part of an Indian reservation, ~~shall be is~~ entitled to receive general assistance or ~~poor relief~~ county general assistance from the county social service board of a nonreservation county in which ~~he the citizen~~ is located upon the same basis and according to the same standards as general assistance or ~~poor relief~~ county general assistance is provided for residents of the county. ~~Such~~ The contract or agreement ~~also must further~~ provide that all cost of ~~poor relief or~~ general assistance or county general assistance payments for Indian citizens located in nonreservation counties who have not acquired residence for welfare purposes, plus ~~such amounts as may be~~ agreed upon as reasonable costs of administration, must be paid as reimbursement to the nonreservation county providing the ~~poor relief~~ county general assistance payments to the Indian citizens by the United States until ~~such the~~ Indian citizens ~~shall~~ acquire a residence in the county for ~~welfare~~ county general assistance purposes. ~~Such~~ The contract may ~~further~~ provide that ~~in the event if~~ an Indian citizen ~~shall have~~ has lived and ~~have has~~ been domiciled in ~~such the~~ nonreservation county for a period of twenty-four months, but has not acquired residence for ~~welfare~~ county general assistance purposes in ~~such the~~ nonreservation county, the responsibility of the United States to reimburse ~~such that~~ county for general assistance or ~~poor relief~~ county general assistance payments and costs of administration ~~shall cease~~ ceases, and the department shall ~~thereupon~~ reimburse ~~such the~~ nonreservation county for ~~such those~~ costs until ~~such time as~~ such the Indian citizen ~~shall acquire~~ acquires residence for ~~welfare~~ county general assistance purposes in the nonreservation county. The agreement or contract must contain ~~such other provisions as may in the discretion of~~ determined by the department to be necessary to properly administer ~~such a this~~ program of general assistance or ~~poor relief~~ county general assistance, and must contain a provision for the termination of the contract or agreement upon reasonable notice by the state.

**SECTION 20. AMENDMENT.** Subsection 2 of section 50-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "County agency" means the county social service board in each of the ~~counties~~ county of the state ~~established under section 50-01-07.~~

**SECTION 21. AMENDMENT.** Section 50-24.5-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-03. Powers and duties of county ~~agencies~~ agency.** Each county agency shall:

1. Administer aid to aged, blind, and disabled persons at the county level under the direction and supervision of the department, pursuant to state requirements.
2. Provide the services described in this chapter. The county agency may contract with a qualified service provider in ~~its~~ the provision of ~~its~~ those services.
3. Determine eligibility for benefits under this chapter and periodically redetermine eligibility of persons receiving benefits pursuant to this chapter.
4. Review the circumstances of congregate housing for residents receiving services under this chapter which may exist or may be established in the county and certify to the department that each congregate housing facility conforms to standards contained in rules adopted by the department.
5. Provide case management services to eligible beneficiaries.
6. Provide assessments to eligible beneficiaries and to applicants, where necessary.
7. Conduct initial and ongoing functional assessments of applicants in cooperation with basic care facilities.
8. Submit an annual budget to the board of county commissioners containing an estimate and supporting data, setting forth the county funds needed to carry out this chapter.
9. Cooperate with any other county agency to assure the conduct of initial and ongoing functional assessments and determinations of eligibility with respect to any applicant or eligible beneficiary who is physically present in a county other than the county in which the applicant or eligible beneficiary is a resident for purposes of chapter ~~50-02~~ 50-01.

**SECTION 22. AMENDMENT.** Section 50-24.5-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-06. Appropriation of county funds - Reimbursement by department - Reimbursement by county agency.** The board of county commissioners of each county annually shall appropriate and make available to the human services fund an amount sufficient to pay the county's share of the cost of supplements provided and expenses of administration of this chapter. Upon certification of the costs of administration by each county, the department shall reimburse each county for one-half of the county's costs of administration. Upon claim being made by the department, ~~the~~ each county agency shall reimburse the department for ~~fifty percent~~

the first year of the 1993-95 biennium and the county's share of thirty percent thereafter of the cost of supplementing the income of any every eligible beneficiary who is a resident of the county for purposes of chapter 50-02. The department with the cooperation of county agencies shall develop a formula to be used to determine the appropriate share of basic care assistance costs to be paid by each county.

**SECTION 23. AMENDMENT.** Section 50-24.5-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-07. Residency.** For purposes of this chapter:

1. A person is a resident of this state if:
  - a. The person is not living in an institution and is living in this state:
    - (1) With intent to remain in this state permanently or for an indefinite period; or
    - (2) Without intent if the person is incapable of stating intent.
  - b. The person is living in an institution outside this state and was receiving a benefit under chapter 50-01 on January 1, 1995.
  - c. The person was placed in an out-of-state institution by a county agency or the department while the person was incapable of indicating intent.
  - d. The person is living in an in-state institution, has lived in that institution for at least thirty days, and was not placed in that institution by another state. A person placed in an institution by another state is a resident of the state making the placement. Any action beyond providing information to the person and the person's family constitutes arranging or making a state placement. However, the following actions do not constitute state placement:
    - (1) Providing basic information about this chapter and information about the availability of this chapter; or
    - (2) Assisting a person in locating an institution in this state, if the person is capable of indicating intent and independently decides to move.
2. A person who is a resident of this state is a resident of the county in which the person is a resident for purposes of chapter ~~50-02~~ 50-01.

<sup>217</sup> **SECTION 24. AMENDMENT.** Subsection 15 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>217</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1366, chapter 606; section 1 of House Bill No. 1252, chapter 608; and section 1 of Senate Bill No. 2085, chapter 610.

15. "Employee" means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
- (2) Aliens.
- (3) ~~Poor relief~~ County general assistance workers except ~~such as those who~~ are engaged in repaying to counties ~~relief~~ moneys ~~which that~~ the counties have been compelled by statute to expend for ~~poor relief~~ county general assistance.
- (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person ~~may have~~ has any claim for relief or right to compensation for any injury to ~~such a~~ minor worker, but in the event of the award of a lump sum of compensation to ~~such a~~ minor employee, ~~such the lump~~ sum ~~shall may~~ be paid only to the legally appointed guardian of ~~such the~~ minor.

b. The term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse or child of the employer dwelling in the household of the employer.
- (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
  - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
  - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.

- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
  - (6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.
- c. Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium ~~therefor~~ for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.

**SECTION 25. REPEAL.** Sections 50-01-05, 50-01-06, 50-01-07, 50-01-07.1, 50-01-08, 50-01-08.1, 50-01-09.1, 50-01-12, 50-01-14, 50-01-15, 50-01-16, 50-01-20, 50-01-22, and chapter 50-02 of the North Dakota Century Code and sections 50-01-09 and 50-01-10 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved April 5, 1995  
Filed April 6, 1995

## CHAPTER 457

## HOUSE BILL NO. 1074

(Representatives Austin, Kliniske)

## HUMAN SERVICES ADVISORY BOARD ELIMINATED

AN ACT to amend and reenact sections 50-06-01, 50-06-01.3, 50-06-05.1, 50-06-16, and 50-06-17 of the North Dakota Century Code, relating to the human services advisory board; and to repeal section 50-06-01.6 of the North Dakota Century Code, relating to the creation of and membership of the human services advisory board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01. ~~Definitions~~ Definition.** As used in this chapter, unless the context otherwise requires:

1. **~~"Board"~~ means the human services advisory board.**
2. **~~"Department"~~ "department" means the department of human services.**

SECTION 2. AMENDMENT. Section 50-06-01.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.3. Appointment of executive director - Compensation.** The governor shall appoint the executive director of the department who shall serve at the pleasure of the governor. ~~The board may advise the governor concerning the appointment or reappointment of an executive director.~~ The executive director shall take the oath of office required of civil officers by section 44-01-05. The executive director is entitled to receive compensation in the amount established by the governor within the limits of legislative appropriations.

<sup>218</sup> SECTION 3. AMENDMENT. Section 50-06-05.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-06-05.1. Powers and duties of the department.** The department has the following powers and duties to be administered; ~~with the advice of the board;~~ by the department through its state office or through regional human service centers or otherwise as directed by it:

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<sup>218</sup> Section 50-06-05.1 was also amended by section 1 of Senate Bill No. 2216, chapter 460; sections 10 and 14 of Senate Bill No. 2012, chapter 34; section 25 of House Bill No. 1027, chapter 120; and section 6 of Senate Bill No. 2439, chapter 461.

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of deprived, unruly, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate social legislation to the legislative assembly.
8. To direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department.
9. To inform the public as to social conditions and ways of meeting social needs.
10. To secure, hold, and administer for the purpose for which it is established, any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the ~~board or~~ department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
11. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department including child-care facilities, nonmedical adult-care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
12. To permit the making of any surveys of human service needs and activities if determined to be necessary.
13. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production



of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.

14. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, county social service board, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the developmental center at Grafton, state hospital, or North Dakota industrial school.
15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court, all reports to be kept confidential for the use of the judge except as may be disclosed by the judge.
16. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case, all reports to be kept confidential for use by the judge except as may be disclosed by the judge.
17. To act as the official agency of the state in the administration of the food stamp program and to direct and supervise county administration of that program. Provided, however, that the department with the consent of the budget section of the legislative council may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
18. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing assistance payments, and rental subsidies under any rental assistance programs initiated by the federal government not otherwise by law made the responsibility of another state agency possessing statewide jurisdiction.
19. To act as the official agency of the state in the administration of the energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. Provided, however, that the department with the consent of the budget section of the legislative council may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.

20. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
21. To exercise and carry out any other powers and duties granted the department under state law.
22. To coordinate services for pregnant women.
23. To administer, allocate, and distribute any funds made available for the payment of transitional living services, to develop standards and conduct needs assessments regarding transitional living services, to develop or approve and to evaluate demonstration projects offering transitional living programs, to approve transitional living facilities for the purpose of providing foster care, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection. For purposes of this subsection:
  - a. "Transitional living facility" means a specific site, identified by a licensed child-placing agency and approved by the department, for the provision of transitional living services.
  - b. "Transitional living program" means a program that provides transitional living services, and may include an identified program operations location approved by the department.
  - c. "Transitional living services" may include housing, supervision, and supportive services intended and designed to assist persons who have received foster care services and who have reached age seventeen, but who have not reached age twenty-one, to achieve independence and self-sufficiency.
24. With the approval of the governor, to lease or transfer use of any part of the developmental center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
  - a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the developmental center.
  - b. The transaction is exempt from the provisions of section 50-06-06.6.
  - c. The term of any lease may not exceed ninety-nine years.
  - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.

- e. Any funds realized by any transaction must be deposited in the state's general fund.

**SECTION 4. AMENDMENT.** Section 50-06-16 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-16. Rulemaking authority.** The department may adopt rules necessary to carry out the responsibilities of the department in conformity with any statute administered or enforced by the department. ~~The board shall review the adoption, amendment, or repeal of any rules by the department.~~ All rules adopted must be published in the North Dakota Administrative Code. Rules adopted by agencies prior to January 1, 1982, which relate to functions or agencies covered by this chapter remain in effect until such time as they are specifically amended or repealed.

**SECTION 5. AMENDMENT.** Section 50-06-17 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-17. Biennial report - Budget estimates.** ~~The board~~ department shall ~~review and make recommendations concerning the biennial report and budget estimate prior submit to the department's submission~~ governor and the office of the report and management and budget the biennial report and budget estimate in accordance with sections 54-06-04 and 54-44.1-04.

**SECTION 6. REPEAL.** Section 50-06-01.6 of the North Dakota Century Code is repealed.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 458

### SENATE BILL NO. 2181

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

## COMMITTEES ON AGING, DISABLED, AND WOMEN

AN ACT to create and enact section 50-06-05.6, a new section to chapter 50-06.1, a new section to chapter 54-34.3, and a new subsection to section 54-44.3-20 of the North Dakota Century Code, relating to the commission on aging, the committee on employment of people with disabilities, the commission on the status of women, and positions exempt from the central personnel system; to amend and reenact subsection 5 of section 39-01-15, sections 50-06-01.4, 50-27-01, and 50-27-03, and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to parking certificates for the mobility impaired and to the children's trust fund administration; and to repeal chapter 50-26 of the North Dakota Century Code, relating to the governor's council on human resources.

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

<sup>219</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 39-01-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Except as provided in this subsection, two dollars of each fee for issuance of a certificate and one dollar of each fee for issuance of an additional certificate under this section must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate. The rest of the fee, and the five-dollar fee received for the issuance of an additional certificate under subsection 4, must be deposited in the state treasury and credited to the employment of people with disabilities fund. The fees deposited in the fund are hereby appropriated on a continuing basis to the committee on employment of people with disabilities of the ~~governor's council on human resources~~ department of human services for development of job opportunities for disabled individuals in this state. If a certificate is lost, mutilated, or destroyed, the person to whom the certificate was issued is entitled to a replacement. The person shall furnish proof satisfactory to the director that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.

<sup>220</sup> **SECTION 2. AMENDMENT.** Section 50-06-01.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>219</sup> Section 39-01-15 was also amended by section 1 of Senate Bill No. 2508, chapter 363.

<sup>220</sup> Section 50-06-01.4 was also amended by section 2 of House Bill No. 1058, chapter 243.

**50-06-01.4. Structure of the department.** The department includes the state hospital; ~~the committees on aging; children and youth; employment of people with disabilities; and related committees established by the governor; of the governor's council on human resources; the commission on the status of women;~~ the regional human service centers; a vocational rehabilitation unit; and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

1. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, children's trust fund, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
2. Administration of programs for persons with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
3. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001, et seq.], home and community-based services, licensure of adult family care homes, committee on aging, and the fund matching program for city or county tax levies for senior citizen activities and services.
4. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
5. Administration of programs for crippled children, including the provision of services and assistance to crippled children and their families, and the development and operation of clinics for the identification, screening, referral, and treatment of crippled children.
6. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.
7. Administration of economic assistance programs, including aid to families with dependent children, food stamps, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.
8. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment,

the licensure of basic care facilities, utilization control, and claims processing.

The executive director shall consult with and maintain a close working relationship with the state department of health and consolidated laboratories; with the department of corrections and rehabilitation and the superintendents of the school for the deaf and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

**SECTION 3.** Section 50-06-05.6 of the North Dakota Century Code is created and enacted as follows:

50-06-05.6. Committee on aging - Appointment - Expenses. There is hereby established a committee on aging. The governor shall appoint each committee member for a term of three years, staggered so that the terms of one-third of the members of the committee expire July first of each year, except that initial appointments to the committee must be made on the basis of a one-year term for one-third of the members of the committee; a two-year term for one-third of the members of the committee; and a full three-year term for the remaining members of the committee. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the unexpired term. The members must be paid for mileage and actual expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers.

**SECTION 4.** A new section to chapter 50-06.1 of the North Dakota Century Code is created and enacted as follows:

Committee on employment of people with disabilities - Appointment - Expenses - Director - Duties. There is established a committee on employment of people with disabilities. The committee consists of three members. The governor shall appoint each member for a term of three years, staggered so that the term of one member expires July first of each year. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the unexpired term. The members are entitled to be paid for mileage and actual expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees. The committee, with the approval of the governor, shall appoint a full-time director to serve at the pleasure of the governor. For administrative purposes, the director is an unclassified employee of the department and is not included in the central personnel system. The committee shall coordinate activities and serve as a clearinghouse for information relating to the employment of people with disabilities. The committee shall prepare for and perform followup duties in connection with state, regional, and national conferences, encourage interest, participation, and cooperation with state departments, agencies, and other organizations in developing needed services, facilities, and opportunities, and provide consultant help to local organizations created for the purpose of coordinating activities for the employment of people with disabilities.

**SECTION 5. AMENDMENT.** Section 50-27-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-27-01. Creation and administration of children's trust fund. There is hereby created in the state treasury a special fund known as the children's trust fund. The committee on children and youth of the governor's council on human resources children and family services division of the department of human services shall administer the fund. The chairperson of the committee, or such other person as the committee may designate, and the state treasurer shall deposit in the children's trust fund at such times as they may become available, all All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the children's trust fund. The state treasurer shall invest such funds in interest-bearing accounts as is designated by the committee children and family services division, and the interest earned must be deposited in the children's trust fund. The department of human services shall provide administrative and clerical support for the children's trust fund. The children and family services division shall designate the administrator of child protective services as executive secretary of the children's trust fund.

SECTION 6. AMENDMENT. Section 50-27-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-27-03. Authority of the committee on children and youth children and family services division of the department of human services. In addition to the powers and duties enumerated in section 50-26-02, the committee on children and youth of the governor's council on human resources The children and family services division may:

1. Apply for and receive public funds from any source; devises, legacies, bequests, gifts, and donations from private individuals; organizations; or funds from any other source not contrary to law.
2. Create such advisory committees as may be deemed necessary to assure public involvement in the planning, development, and administration of the children's trust fund.
- 3- 2. Hire or arrange for appropriate staff, as deemed necessary, to administer and maintain properly the children's trust fund.
- 4- 3. Develop, implement, and periodically review a written plan to be used in administering the funds expended from and retained in the children's trust fund. The written plan must include the types of activities to be funded, the nature of organizations preferred for funding, the criteria for eligible fund applicants, and the mechanisms for the monitoring and evaluating of funded activities.
- 5- 4. Award grants from the children's trust fund in accordance with this chapter and any rules that have been adopted.
6. Adopt, after public notice and an opportunity for comment has been given, any rules it determines to be necessary to carry out this chapter.
7. Contract with persons or organizations, including political subdivisions and school districts.
8. Prepare and submit to the executive director of the department of human services a report at the end of each biennium.

The director of the department of human services shall designate a person with a demonstrated expertise in the prevention of child abuse and neglect as executive secretary to the children and youth committee to assist in the administration of the children's trust fund.

**SECTION 7. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, ~~50-26-01~~ 50-06-05.6, 54-54-02, section 4 of this Act, section 8 of this Act, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
  - a. The aeronautics commission.
  - b. The milk stabilization board.
  - c. The dairy promotion commission.
  - d. The state banking board.
  - e. The state credit union board.
  - f. The advisory board of directors to the Bank of North Dakota.
  - g. The board of pardons.
  - h. The state parole board.
  - i. The state board of public school education.
  - j. The teachers' professional practices commission.
  - k. The board of trustees for the teachers' fund for retirement.
  - l. The educational telecommunications council.
  - m. The state game and fish advisory board.
  - n. The health council.
  - o. The air pollution control advisory council.
  - p. The board of animal health.
  - q. The administrative committee on veterans' affairs.
  - r. The ~~governor's council~~ council committee on human resources aging.
  - s. The committee on employment of people with disabilities.



- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- ~~t~~ v. The state historical board.
- ~~tt~~ w. The Yellowstone-Missouri-Fort Union commission.
- ~~vt~~ x. The state water commission.
- ~~wt~~ y. The state water pollution control board.

SECTION 8. A new section to chapter 54-34.3 of the North Dakota Century Code is created and enacted as follows:

Commission on the status of women - Appointment - Expenses - Duties. There is established a commission on the status of women. The commission consists of five members. The governor shall appoint each member for a term of four years, staggered so that the term of at least one member expires July first of each year. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the unexpired term. The members are entitled to be paid for mileage and actual expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees. The commission shall coordinate activities and serve as a clearinghouse and an advisory group to the department for information relating to economic development programs that focus on career development for women. The commission shall prepare for and perform followup duties in connection with state, regional, and national conferences, encourage interest, participation, and cooperation with state departments, agencies, and other organizations in developing needed services, facilities, and opportunities, and provide consultant help to local organizations created for the purpose of coordinating activities for the economic and career development of women.

<sup>221</sup> SECTION 9. A new subsection to section 54-44.3-20 of the North Dakota Century Code is created and enacted as follows:

The director of the committee on employment of people with disabilities of the department of human services.

SECTION 10. REPEAL. Chapter 50-26 of the North Dakota Century Code is repealed.

Approved April 13, 1995  
Filed April 18, 1995

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<sup>221</sup> Section 54-44.3-20 was also amended by section 4 of House Bill No. 1501, chapter 524; section 5 of Senate Bill No. 2211, chapter 199; and section 1 of House Bill No. 1250, chapter 525.

**CHAPTER 459****SENATE BILL NO. 2035**

(Legislative Council)

(Interim Budget Committee on Human Services)

(Senators Thane, Mathern, Yockim)

(Representatives Payne, Svedjan, Rydell)

**WELFARE REFORM DEMONSTRATION PROJECT**

AN ACT to require the department of human services to seek authorization for a demonstration project to combine benefits under the aid to families with dependent children, fuel assistance, and food stamp programs; to require the department of human services to report to the legislative council and budget section regarding the implementation status of the demonstration project; and to declare an emergency.

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

**SECTION 1. Department to seek waiver to establish welfare reform demonstration project - Interim rulemaking.** The department of human services shall seek, from appropriate federal officials, authorization to establish a demonstration project to combine the benefits provided under the state's aid to families with dependent children, fuel assistance, and food stamp programs, pursuant to title IV-A of the Social Security Act [42 U.S.C. 601 et seq.], the low-income home energy assistance program [42 U.S.C. 8621-8629], and the Food Stamp Act [7 U.S.C. 2011-2027]. The demonstration project established under this section must provide for uniform and consistent treatment of income and assets in determining eligibility; provide for the creation of a uniform method of budgeting and computing benefits, a consistent certification period for the receipt of benefits, and uniform reporting requirements; provide for necessary child care to allow a participant to meet educational and employment goals; and provide for universal employment and training to assist individuals in becoming self-sufficient. The project may be administered notwithstanding the requirements of subsections 4 and 5 of section 50-01-09, section 50-03-07, subsections 17 and 19 of section 50-06-05.1, chapter 50-09, and section 50-11.1-11.1, relating to the administration of the aid to families with dependent children, fuel assistance, and food stamp programs, except that a county shall reimburse the state for expenditures for the aid to families with dependent children program in that county as required by section 50-09-21. The demonstration project may require any participant to cooperate with child support enforcement efforts. The department of economic development and finance, job service North Dakota, county social service boards, and any other state agency determined appropriate, shall cooperate with the department to ensure the success of the project. Local government agencies within the demonstration project counties are encouraged to cooperate with the department. Rules adopted to implement the demonstration project may be adopted as interim final rules without a finding that emergency rulemaking is necessary, and the interim final rules may take effect on a date no earlier than the date of filing with the legislative council of the notice of proposed adoption of a rule required by subsection 4 of section 28-32-02.

**SECTION 2. REPORT TO THE LEGISLATIVE COUNCIL.** The department of human services shall report to the budget section and another interim committee designated by the legislative council on the implementation status of the demonstration project during the 1995-96 interim. If a waiver request made to

appropriate federal officials by January 17, 1995, to establish and implement the demonstration project is denied, the department of human services shall promptly inform the budget section and any other interim committee designated by the legislative council of the denial and of any recommendations by the department for changes to the demonstration project to accommodate the denial.

**SECTION 3. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure.

Approved April 12, 1995

Filed April 13, 1995

**CHAPTER 460****SENATE BILL NO. 2216**

(Senators Mutch, Lips)  
(Representative Svedjan)

**ENERGY ASSISTANCE PROGRAM ADMINISTRATION**

AN ACT to amend and reenact subsection 19 of section 50-06-05.1 of the North Dakota Century Code, relating to administration of the energy assistance program.

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

<sup>222</sup> **SECTION 1. AMENDMENT.** Subsection 19 of section 50-06-05.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19. To act as the official agency of the state in the administration of the energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. ~~Provided, however, that the~~ For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the budget section of the legislative council may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.

Approved March 24, 1995

Filed March 27, 1995

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<sup>222</sup> Section 50-06-05.1 was also amended by section 3 of House Bill No. 1074, chapter 457; sections 10 and 14 of Senate Bill No. 2012, chapter 34; section 25 of House Bill No. 1027, chapter 120; and section 6 of Senate Bill No. 2439, chapter 461.

## CHAPTER 461

## SENATE BILL NO. 2439

(Senator Thane)  
(Representative Svedjan)

## MEDICAID REQUIREMENTS IMPLEMENTATION

AN ACT to create and enact a new section to chapter 14-09, a new chapter to title 26.1, a new subsection to section 50-06-05.1, and a new section to chapter 50-24.5 of the North Dakota Century Code, relating to implementation of the medicaid requirements of the Omnibus Budget Reconciliation Act of 1993; and to amend and reenact section 14-09-08.11, subsection 5 of section 14-09-09.10, sections 26.1-36-12, 50-24.1-02.3, and 50-24.1-07 of the North Dakota Century Code, relating to pre-need funeral plans and implementation of the medicaid requirements of the Omnibus Budget Reconciliation Act of 1993.

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

SECTION 1. AMENDMENT. Section 14-09-08.11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.11. Eligible child - Coverage to continue Employer to permit enrollment. A minor child that When an obligor is required to cover a minor child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor until the child's eighteenth birthday or until further order of the court. Insurance companies and nonprofit health service corporations licensed in this state shall continue coverage of a minor child insured under an accident and health insurance policy or health service contract while the legal custody of the minor child has been given by the court to the obligee to the same extent as the general public is covered as long as the minor child meets all the other usual qualifications for insurability and payment continues on the policy or contract premiums. Insurance companies and nonprofit health service corporations licensed in this state shall provide coverage for minor children of an obligor who has been ordered to obtain dependent health insurance under the terms and conditions applicable to coverage for newly born children, as though the date of the order issued under section 14-09-08.10 was the day of the child's birth, and further provided that coverage must be provided to the same extent the general public is covered as long as the minor child meets all the other usual qualifications for insurability and policy or contract premiums are paid. A determination that legal custody will be with a parent other than a parent who pays policy or contract premiums, or on whose behalf payment of policy or contract premiums is made, may not be a basis for cancellation of the minor child's accident and health insurance policy or health service contract. If health insurance coverage required under section 14-09-08.10 is available through an income payer, the income payer must:

1. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions.

2. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee.
3. Not disenroll or eliminate coverage for any child unless the income payer is provided satisfactory written evidence that:
  - a. The order issued under section 14-09-08.10 is no longer in effect;
  - b. The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment; or
  - c. The income payer has eliminated family health coverage for all of its employees; and
4. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the health insurance provider.
5. If the amount required to be withheld under subsection 4, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income. Withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the health insurance provider. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the income payer must promptly inform the clerk of court that issued the order under section 14-09-09.15 of the insufficiency.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Health insurance reimbursements received by but not owed to obligor to be paid over - Finding of contempt - Treatment as delinquent child support.

1. A payment for services rendered by a medical provider to an obligor's dependent which is directed to the obligor in the form of reimbursements from health insurance must be paid to the medical provider, custodial parent, or public authority when the reimbursement is not owed to the obligor.
2. Any child support order that requires an obligor to provide health insurance is deemed to include the requirements of this section. An obligor retaining insurance reimbursement not owed to the obligor may be found in contempt of a child support order that requires the obligor to provide health insurance.
3. Any insurance reimbursement received by the obligor, but not owed to the obligor, may be treated as delinquent child support thirty days after receipt by the obligor if not sooner paid to the medical provider, custodial parent, or public authority, as their interests may appear, and

is subject to all remedies available under this code for the collection of delinquent child support.

**SECTION 3. AMENDMENT.** Subsection 5 of section 14-09-09.10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.

**SECTION 4.** A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Insurer" means any health insurer, including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], a health maintenance organization as defined in section 26.1-18-01, a health service corporation as defined in section 26.1-17-01, and a provider of an accident and health insurance policy as defined in section 26.1-36-03.

Prohibited practices.

1. No insurer may deny enrollment of a child under the health coverage of the child's parent on the grounds that:
  - a. The child was born out of wedlock;
  - b. The child is not claimed as a dependent on the parent's federal income tax return; or
  - c. The child does not reside with the parent or in the insurer's service area.
2. Any provision in an individual or group accident and health insurance policy, nonprofit health service contract, or group health plan issued by any insurer that conflicts with subsection 1 is void.

Enrollment of children. If a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, the insurer shall:

1. Permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions and subject to the prohibited practices provisions of this chapter;

2. If a parent fails to provide health coverage for any child, enroll the child under family coverage upon application by the child's other parent or by the department of human services; and
3. Not disenroll or eliminate coverage for any child unless the insurer is provided satisfactory written evidence that:
  - a. The court or administrative order is no longer in effect; or
  - b. The child is or will be enrolled with comparable coverage that will take effect no later than the effective date of disenrollment.

Providing information and paying claims. If a child has health coverage through the insurer of a noncustodial parent, the insurer shall:

1. Provide information to the custodial parent as may be necessary for the child to obtain benefits through the health coverage;
2. Permit the custodial parent, the provider of health care, with the custodial parent's approval, or the department of human services, as the custodial parent's assignee, to submit claims for covered services without the approval of the noncustodial parent; and
3. Make payment on claims submitted in accordance with subsection 2 directly to the custodial parent, provider, or department, as their interests may appear.

Authority and jurisdiction. This chapter is adopted pursuant to the requirements of sections 4301 and 13623 of Public Law 103-66 [107 Stat. 312; 29 U.S.C. 1161 et seq. and 42 U.S.C. 1396g-1]. The commissioner may take any action reasonably necessary to enforce this chapter and section 26.1-36-12. Any insurer subject to the provisions of this chapter or section 26.1-36-12 must submit to the jurisdiction of the commissioner and to the courts of this state to the greatest extent permitted under state or federal law.

**SECTION 5. AMENDMENT.** Section 26.1-36-12 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-12. Provisions prohibited in individual and group accident and health insurance policies, group health plans, and nonprofit health service contracts.**

1. Any provision in any individual or group accident and health insurance policy, employee welfare benefit plan, or nonprofit health service contract issued by any insurance company, group health plan as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], or nonprofit health service corporation denying or prohibiting the insured, participant, beneficiary, or subscriber from assigning to the department of human services any rights to medical benefits coverage to which the insured, participant, beneficiary, or subscriber is entitled under the policy, plan, or contract is void. An individual or group insurance company or nonprofit health service corporation shall recognize the assignment of medical benefits coverage completed by the insured, participant, beneficiary, or subscriber, notwithstanding any provision contained in the policy or contract to the contrary.



2. Any individual or group provision in any accident and health insurance policy, employee welfare benefit plan, or nonprofit health service corporation contract issued by any insurance company, group health plan, or nonprofit health service corporation which limits or excludes payments of medical benefits coverage to or on behalf of the insured, participant, beneficiary, or subscriber if the insured, participant, beneficiary, or subscriber is eligible for medical assistance benefits under chapter 50-24.1 is void.

<sup>223</sup> **SECTION 6.** A new subsection to section 50-06-05.1 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

To act as a decedent's successor for purposes of collecting amounts due to the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.

**SECTION 7. AMENDMENT.** Section 50-24.1-02.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.3.** When pre-need funeral plan not to be considered in eligibility determination. In determining eligibility for medical assistance ~~or fuel assistance~~, the department of human services may not consider as an available resource any prepayments or deposits which total three thousand dollars or less, and the interest accrued thereon, made ~~under a pre-need funeral service contract and maintained by an applicant for or recipient of medical assistance or fuel assistance in a fund, not commingled with any other funds, designated by the applicant or recipient as set aside to pay for the applicant's or recipient's funeral.~~ A pre-need funeral service contract deposit is not a multiple-party account for purposes of chapter 30.1-31. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance ~~or fuel assistance~~ recipient except to the extent that ~~prepayments or deposits on pre-need funeral service contracts~~ funds maintained in accordance with this section total less than one thousand four hundred dollars.

**SECTION 8. AMENDMENT.** Section 50-24.1-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-07. Recovery from estate of medical assistance recipient.**

1. On the death of any recipient of medical assistance who was ~~sixty-five~~ fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of such a deceased recipient, the total amount of medical assistance paid on behalf of the ~~decedent~~ recipient following the ~~decedent's sixty-fifth~~ recipient's fifty-fifth birthday must be allowed as a preferred claim against the decedent's estate after ~~funeral~~ payment, in the following order, of:

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<sup>223</sup> Section 50-06-05.1 was also amended by section 3 of House Bill No. 1074, chapter 457; section 1 of Senate Bill No. 2216, chapter 460; sections 10 and 14 of Senate Bill No. 2012, chapter 34; and section 25 of House Bill No. 1027, chapter 120.

- a. Funeral expenses not in excess of fourteen hundred dollars; ~~expenses;~~
  - b. Expenses of last illness; ~~and expenses;~~
  - c. Expenses of administering the estate, including attorney's fees approved by the court; ~~and claims;~~
  - d. Claims made under chapter 50-01;
  - e. Claims made under chapter 50-24.5; and
  - f. Claims made under chapter 50-06.3 and on behalf of the state hospital have been paid.
2. No claim must be paid during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
3. Every personal representative, upon the granting of letters of administration or testamentary shall; ~~at the time that publication of notice to creditors is required;~~ forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of ~~such the~~ estate. ~~If no notice is required by the proceedings, the personal representative shall forward to the department of human services a copy of the petition or application commencing the proceedings, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate.~~ Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.

SECTION 9. A new section to chapter 50-24.5 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Department has preferred claim against estate. Funds used to provide services to an eligible beneficiary may not be considered as gifts. The department has a preferred claim against the estate of any person for recovery of funds expended under this chapter for that person or that person's spouse or minor children. No statute of limitations or similar statute nor the doctrine of laches bars a claim under this chapter.

Approved April 12, 1995  
Filed April 13, 1995

**CHAPTER 462****HOUSE BILL NO. 1162**

(Representative Svedjan)

**CHILD CARE PROVIDER PAYMENTS**

AN ACT to amend and reenact section 50-06-06.11 of the North Dakota Century Code, relating to child care provider payments; and to repeal section 50-06-06.12 of the North Dakota Century Code, relating to withholding from child care provider reimbursement payments.

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

**SECTION 1. AMENDMENT.** Section 50-06-06.11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-06-06.11. Child care provider reimbursement payments.** Within the limits of federal regulations, the department of human services, at the election of the early childhood facility, shall directly ~~reimburse~~ pay early childhood facilities monthly under child care assistance programs administered by the department.

**SECTION 2. REPEAL.** Section 50-06-06.12 of the 1993 Supplement to the North Dakota Century Code is repealed.

Approved March 10, 1995  
Filed March 10, 1995

**CHAPTER 463****HOUSE BILL NO. 1030**

(Legislative Council)

(Interim Budget Committee on Home and Community Care)

(Representatives Coats, Grumbo, Huether)

(Senators Krauter, Lindaas, Andrist)

**BASIC CARE FACILITY RATESETTING  
METHODOLOGY**

AN ACT to amend and reenact section 50-06-14.3 of the North Dakota Century Code, relating to basic care facility rates.

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

<sup>224</sup> **SECTION 1. AMENDMENT.** Section 50-06-14.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-06-14.3. Department of human services to develop basic care facility ratesetting methodology.** The department of human services shall develop a ratesetting methodology that provides for rates for all residents of basic care facilities that receive payments from the state or any political subdivision. The methodology may not provide for different rates for similarly situated residents because of the source of payment for any resident's care. The department shall consult with representatives of the basic care industry in this state in developing the ratesetting methodology. Beginning July 1, 1995, the department shall establish rates for all residents of basic care facilities that receive payments from the state or any political subdivision in accordance with the ratesetting methodology developed by the department. After June 30, 1995, no agency of the state or any political subdivision may make payments to a basic care facility that does not set rates at the levels established by the department.

Approved March 24, 1995

Filed March 27, 1995

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<sup>224</sup> Section 50-06-14.3 was also amended by section 16 of Senate Bill No. 2012, chapter 34.

## **CHAPTER 464**

### **HOUSE BILL NO. 1160**

(Representatives Payne, Svedjan)

### **AFDC EMPLOYMENT INCENTIVES**

AN ACT to repeal section 50-09-02.3 of the North Dakota Century Code, relating to a waiver from the federal government to allow employment incentives for recipients of aid to families with dependent children benefits.

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

**SECTION 1. REPEAL.** Section 50-09-02.3 of the 1993 Supplement to the North Dakota Century Code is repealed.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 465****SENATE BILL NO. 2266**

(Senators Nalewaja, Grindberg, Scherber)  
(Representatives Kelsch, Price)

**EARLY CHILDHOOD FACILITY LICENSE  
SUSPENSION**

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to the suspension of an early childhood facility license during a child abuse or neglect investigation.

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

**SECTION 1.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

**Suspension of license - Notification to parent, guardian, or custodian.** The department may suspend the license of any early childhood facility during an investigation of a report of child abuse or neglect at the facility conducted pursuant to section 50-25.1-05. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department may notify the parent, guardian, or custodian of any child receiving care at the facility when the license of the facility is suspended. Upon the conclusion and disposition of the investigation of the facility, the department may notify the parent, guardian, or custodian of the child of the disposition.

Approved March 6, 1995  
Filed March 6, 1995

**CHAPTER 466****SENATE BILL NO. 2092**

(Senators Nalewaja, Solberg, Grindberg, Robinson)  
(Representatives Kelsch, Carlisle)

**CHILD CARE REGISTRATION DENIAL**

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to providing early childhood services; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

**Penalty for provision of services in violation of sections 50-11.1-04 and 50-11.1-06.** A person who has been convicted of a crime against a child or is a sexual offender, as defined in section 12.1-32-15, or who has had an application for licensure or registration to provide early childhood services denied because of a finding of probable cause against that person for child abuse or neglect under chapter 50-25.1 or who has had a license or certificate of registration to provide early childhood services revoked upon a finding of probable cause against that person for child abuse or neglect under chapter 50-25.1, and who continues to provide early childhood services to any child not a member of that person's household, is guilty of a class B misdemeanor.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 467

## HOUSE BILL NO. 1386

(Representatives Thoreson, Koppelman, Clark)

CHARITABLE ORGANIZATION SOLICITATION AND  
LICENSES

AN ACT to amend and reenact subsections 1 and 2 of section 50-22-01, sections 50-22-02, 50-22-02.1, 50-22-04, and 50-22-05 of the North Dakota Century Code, relating to the definition of charitable organizations and contributions, licenses to solicit, fees, registration of fundraisers and solicitors, annual information reports, and penalties.

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

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 50-22-01 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "Charitable organization" means any benevolent, philanthropic, patriotic, social, or eleemosynary organization, or one purporting to be ~~such~~ except organizations soliciting funds for institutions of higher learning, and organizations soliciting funds for churches operating and having a place of worship within the state. This definition may not be deemed to include duly this type of organization. The term does not include:
  - a. An organization soliciting funds for an institution of higher learning.
  - b. An organization using only volunteer fundraisers and soliciting funds for a political subdivision or other government entity.
  - c. A private or public elementary or secondary school.
  - d. A charitable organization or person soliciting contributions for any person specified by name at the time of the solicitation if all the contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian, or conservator with no restriction on their expenditure and with no deduction.
  - e. A duly constituted religious ~~organizations~~ organization or any group affiliated with and forming an integral part of said that organization no part of the net income of which inures to the direct benefit of any individual and which ~~have~~ has received a declaration of current tax exempt status from the government of the United States; provided, that no such affiliated group may be required to obtain ~~such the~~ declaration if the parent or principal organization has obtained ~~same the~~ declaration.
2. "Contribution" means the promise or grant of any money or property of any kind or value. The term includes a promise or grant of money or property for which consideration in the form of a service or good is



provided if the promise or grant may have been given as a result of a connection to a charitable organization.

**SECTION 2. AMENDMENT.** Section 50-22-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-22-02. License to solicit - Term - Revocation.** No charitable organization may solicit contributions from persons in this state by any means whatsoever without first having obtained a license from the secretary of state. The secretary of state shall investigate the financial responsibility, experience, character, and general fitness of the applicant; ~~and if such.~~ If the investigation warrants the belief that the solicitations are for a worthy charitable purpose and that the applicant will conduct solicitations in accordance with the law, the secretary of state shall issue a license ~~must be issued to such~~ the applicant, giving him the applicant the right to solicit within the state ~~for a period of one year~~ until the first day of September of that year ~~except that an initial license issued to a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 must be valid until September first of the subsequent year.~~ If the secretary of state finds the applicant is not qualified to be issued a license, ~~he~~ the secretary of state shall deny the application, forthwith notify the applicant of the denial, but ~~retain~~ the license fee ~~must be retained.~~ If the applicant does not fulfill the requirements for an application within ninety days of the initial date of application, the application is deemed denied and the secretary of state shall file the documentation and retain any fee received. An applicant whose application is denied for failure to complete within the ninety-day time period shall submit a new application and license fee. All fees collected under ~~the provisions of~~ this chapter must be credited to the general fund of the state. The fee for ~~such an initial license must be ten~~ is twenty-five dollars ~~and may be renewed from year to.~~ A license obtained under this section is valid for no more than fourteen months the first year a license is obtained and one year thereafter, but and is subject to revocation by the secretary of state at any time for just cause. The fee for a subsequent license is ten dollars.

**SECTION 3. AMENDMENT.** Section 50-22-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-22-02.1. Registration of professional fundraiser, professional solicitor, and charitable organizations who engaged them.** The secretary of state or ~~his~~ the secretary's designee shall examine each initial application of charitable organizations for the right to solicit funds and each renewal application of charitable organizations for the right to solicit funds. If the solicitation is to be made in whole or in part by a professional fundraiser or professional solicitor, the secretary of state shall approve registration if the arrangement for payment conforms to the requirements of this chapter and all relevant rules. The registration of a professional fundraiser grants the right to solicit funds within the state for charitable organizations until the first day of September of that year. Any applicant who is denied registration may, within fifteen days from the date of notification of ~~such~~ denial, request in writing a hearing before the secretary of state. The hearing must be held within fifteen days from the date of the request.

No person may act as a professional fundraiser or professional solicitor for a charitable organization subject to ~~the provisions of~~ this chapter unless ~~he has~~ that person first has registered with the secretary of state. ~~Applications~~ An application for registration must be in writing, under oath or affirmation in the form prescribed by the secretary of state, and must contain ~~such~~ any information ~~as~~ the secretary of state may require. The application for registration by a professional fundraiser or professional solicitor must be accompanied by an annual fee in the sum of one

hundred dollars. A partnership, corporation, or limited liability company ~~which that~~ is a professional fundraiser or professional solicitor may register for and pay a single fee on behalf of all its members, officers, agents, and employees. However, the names and addresses of all officers, agents, and employees employed to work under the direction of a professional solicitor or fundraiser must be listed in the application.

~~Every charitable organization engaging a professional solicitor or fundraiser and which submits a proper registration to the secretary of state shall pay an annual registration fee of twenty-five dollars if the charitable organization solicits and receives gross contributions from the public of twenty-five thousand dollars or less during the immediate preceding fiscal year. Every charitable organization engaging a professional solicitor or fundraiser which submits a proper registration to the secretary of state shall pay an annual registration fee of one hundred dollars if the charitable organization solicits and receives gross contributions in excess of twenty-five thousand dollars during the immediate preceding fiscal year. A parent organization filing on behalf of one or more chapters, branches, or affiliates and a federated fundraising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and ~~such the~~ chapters, branches, affiliates, or member agencies included in the registration statement. If any charitable organization, professional fundraiser, or professional solicitor fails to file any registration application or other information required to be filed by the secretary of state under this chapter or otherwise violates the provisions of this chapter, the secretary of state, upon notice by registered or certified mail to its or his last known address, may deny or suspend the application for registration if the information is not filed or if the existing violation is not discontinued within two weeks after the formal notification or receipt of such notice. All civil proceedings under this chapter must be conducted in accordance with chapter 28-32 unless otherwise specifically herein provided. Any notice required under this chapter or chapter 28-32 may be made by certified mail.~~

**SECTION 4. AMENDMENT.** Section 50-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-22-04.** Information required to be filed annually. ~~Within sixty days after the close of the calendar year or the fiscal year, as the case may be, every~~ Every charitable organization, professional fundraiser, or professional solicitor subject to the provisions of this chapter which has received or solicited contributions from within this state during the previous ~~calendar or fiscal year~~ reporting period of July first through June thirtieth shall file the following information in the manner hereinbefore provided and on forms to be provided by the secretary of state ~~on or before the first day of September of every year, whether or not the charitable organization is reapplying for a license to solicit contributions:~~

1. The gross amount of the contributions pledged or collected in this state.
2. The amount thereof given or to be given to the charitable purpose represented.
3. The aggregate amount paid or received and to be paid or received for the expenses of ~~such~~ solicitation.
4. The aggregate amount paid to or received and to be paid or received to or by professional fundraisers and solicitors.

In addition, the secretary of state may make a detailed examination of the accounts of any charitable organization conducting a solicitation for funds within this state. Upon request the attorney general shall assist the secretary of state in carrying out ~~the provisions of~~ this chapter and, for this purpose, ~~shall have~~ has all powers ~~herein~~ granted by this chapter to the secretary of state. Every charitable organization subject to ~~the provisions of~~ this chapter shall keep a full and true record in ~~such the~~ form ~~as~~ that will enable ~~such the~~ charitable organization to accurately provide the information required by this chapter.

**SECTION 5. AMENDMENT.** Section 50-22-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-22-05. Enforcement - Penalties.** Any person conducting a solicitation in violation of ~~the provisions of~~ this chapter, or failing to properly complete and file any report required under this chapter, is guilty of a class A misdemeanor. A fundraiser who commences or continues fundraising after the fundraiser's application is denied or the license is revoked or canceled is guilty of a class C felony. In addition to any criminal penalties, the secretary of state may deny the fundraiser the right to engage in future fundraising activities.

Whenever the attorney general or any state's attorney has reason to believe or is advised by the secretary of state that the ~~said~~ fundraiser, charitable organization, or professional solicitor is operating in violation of ~~the provisions of~~ this chapter, the attorney general or state's attorney may bring an action in the name of the state of ~~North Dakota~~ against ~~such the~~ charitable organization and its officers, ~~such the~~ professional fundraiser or professional solicitor, or any other person who has violated this chapter or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin ~~such the~~ charitable organization or professional fundraiser or professional solicitor or other person from continuing ~~such the~~ violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance thereof and for ~~such~~ any other relief as the court deems determines appropriate.

Approved April 12, 1995  
Filed April 13, 1995

**CHAPTER 468****SENATE BILL NO. 2461**

(Senators Kringstad, Lips)  
(Representatives Delmore, K. Henegar)

**NURSING FACILITY COMPLIANCE WITH MEDICAL ASSISTANCE PROGRAM**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to remedies to ensure prompt compliance by nursing facilities with requirements of the medical assistance program.

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

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Department to comply with federal requirements - Interagency cooperation - Civil money penalty fund.**

1. The department of human services shall take any action necessary to comply with the requirements of section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)], including establishing a process to enforce compliance by nursing facilities with requirements for participation in the medical assistance program that conforms to any federal regulations implementing that section.
2. The department of health and consolidated laboratories and the department of human services shall cooperate to achieve prompt and effective implementation of subsection 1.
3. The state treasurer shall establish a fund for the receipt of any civil money penalties imposed under subsection 1. Any civil money penalty paid to the department of human services under subsection 1 must be deposited in that fund, and is hereby appropriated to the department of human services, subject to the approval of the budget section of the legislative council, for the sole purpose of the protection of the health or property of residents of nursing facilities that the state or federal government finds deficient.
4. This Act may not be construed to create any right or authorize any activity not provided for in section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)] or its implementing federal regulations.
5. Before the establishment and assessment of civil money penalties permitted by section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)], the department of human services is encouraged to submit a plan of alternative remedies in accordance with section 1919(h)(2)(B)(ii) of that act.

Approved March 24, 1995  
Filed March 27, 1995

## **CHAPTER 469**

### **SENATE BILL NO. 2538**

(Senators Mathern, G. Nelson)

(Representative Dorso)

(Approved by the Delayed Bills Committee)

### **MEDICAL ASSISTANCE**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance.

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

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Effect of purchase of insurance on disqualifying transfer.** An individual who secures and maintains insurance that covers the cost of substantially all necessary medical care, including necessary care in a nursing home and necessary care for an individual who qualifies for admission to a nursing home but receives care elsewhere, for at least thirty-six months after the date an asset is disposed of, may demonstrate that the asset was disposed of exclusively for a purpose other than to qualify for medical assistance by providing proof of that insurance.

Approved March 29, 1995

Filed March 29, 1995

**CHAPTER 470****SENATE BILL NO. 2034**

(Legislative Council)

(Interim Budget Committee on Home and Community Care)

(Senators Krauter, Bowman, Sand)

(Representatives Coats, Grumbo, Gorder)

**NURSING HOME PROVIDER COST PAYMENT  
SYSTEM**

AN ACT to amend and reenact section 50-24.4-15 of the North Dakota Century Code, relating to a department of human services property cost payment system for nursing home providers.

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

**SECTION 1. AMENDMENT.** Section 50-24.4-15 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.4-15. Property-related costs after January 1, 1990. For all rate years beginning on or after January 1, 1990:**

- ~~1. The department shall reimburse nursing home providers that are vendors in the medical assistance program for the use of real estate and depreciable equipment.~~
- ~~2. In developing the method for determining that part of the payment rate for the use of real estate and depreciable equipment, the department shall consider factors designed to:~~
  - ~~a. Simplify the administrative procedures for determining payment rates for property-related costs;~~
  - ~~b. Minimize discretionary or appealable decisions;~~
  - ~~c. Eliminate any incentives to sell nursing homes;~~
  - ~~d. Recognize legitimate costs of preserving and replacing property;~~
  - ~~e. Recognize the existing costs of outstanding indebtedness allowable under the statutes and rules in effect on July 1, 1985; and~~
  - ~~f. Reward efficient management of capital assets include in the ratesetting system for nursing homes a payment mechanism for the use of real and personal property which provides for depreciation and related interest costs. The property cost payment mechanism must:~~
1. Recognize to the extent allowed by federal rules the valuation basis of assets acquired in a bona fide transaction as an ongoing operation after July 1, 1985, limited to the lowest of:
  - a. Purchase price paid by the purchaser;

- b. Fair market value at the time of sale;
  - c. Seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers (United States city average) from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation, plus recaptured depreciation; or
  - d. Seller's cost basis, increased by one-half of the increase in the Dodge construction index from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation, plus recaptured depreciation.
- 2. Recognize depreciation on land improvements, buildings, and fixed equipment acquired, as an ongoing operation over the estimated useful remaining life of the asset as determined by a qualified appraiser.
- 3. Recognize depreciation on movable equipment acquired as an ongoing operation after the effective date of this Act, over a composite remaining useful life.
- 4. Provide, upon the sale of a facility after the effective date of this Act, for the recapture of depreciation paid after June 1, 1984, on behalf of medical assistance recipients to the extent the sale price of the facility exceeds the facility's undepreciated value except:
  - a. If the facility has been owned twenty years or longer there may be no recapture of depreciation; or
  - b. If the facility has been owned more than ten years but fewer than twenty years the depreciation recapture amount must be reduced by ten percent times the number of years the facility is owned after the tenth year.
- 5. Provide for an interest expense limitation determined by the department and established by rule.
- 6. Establish a per bed property cost limitation considering single and double occupancy construction. Property costs incurred or related to projects having received state health council certificate of need approval prior to July 1, 1994, are not subject to this limitation.
- 7. Recognize increased lease costs of a nursing home operator to the extent the lessor has incurred increased costs related to the ownership of the facility, the increased costs are charged to the lessee, and the increased costs would be allowable had they been incurred directly by the lessee.

Approved March 15, 1995  
Filed March 15, 1995

**CHAPTER 471****SENATE BILL NO. 2155**

(Human Services Committee)

(At the request of the Department of Human Services)

**NURSING FACILITY COST REPORT EXTENSIONS**

AN ACT to amend and reenact section 50-24.4-25 of the North Dakota Century Code, relating to nursing facility cost report extensions.

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

**SECTION 1. AMENDMENT.** Section 50-24.4-25 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.4-25. Extensions.** The department may grant a fifteen-day an extension of the reporting deadline, not to exceed thirty days, to a nursing home for good cause. ~~To receive such an extension, a nursing home shall submit a written request by September first. The department will notify the nursing home of the decision by September fifteenth.~~

Approved April 4, 1995

Filed April 4, 1995



## CHAPTER 472

## SENATE BILL NO. 2068

(Legislative Council)  
(Interim Judiciary Committee)  
(Senators W. Stenehjem, Traynor)  
(Representatives Coats, Kretschmar)

CHILD PROTECTION TEAM DUTIES AND  
TERMINOLOGY

AN ACT to amend and reenact sections 50-25.1-02, 50-25.1-04.1, 50-25.1-05, 50-25.1-05.05, 50-25.1-05.1, 50-25.1-05.2, 50-25.1-05.4, 50-25.1-05.5, 50-25.1-06.1, and 50-25.1-09 of the North Dakota Century Code, relating to child abuse and neglect terminology and the duties of the state child protection team; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>225</sup> SECTION 1. AMENDMENT. Section 50-25.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-02. Definitions.**

1. "A person responsible for a the child's welfare" means the child's ~~parents~~ parent, guardian, or foster parent; an employee of a public or private school or nonresidential child care facility; an employee of a public or private residential home, institution, or agency; or ~~other a~~ a person responsible for the child's ~~health and~~ health in a residential setting.
2. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's ~~health or~~ health ~~welfare~~, or who is suffering from or was subjected to any act involving that individual in violation of sections 12.1-20-01 through 12.1-20-08.
3. "Assessment" means a factfinding process designed to provide information that enables a determination to be made that services are required to provide for the protection and treatment of an abused or neglected child.
4. "Department" means the department of human services or its designee.
- 4+ 5. "Harm" means negative changes in a child's health which occur when a person responsible for the child's ~~health and~~ health ~~welfare~~:

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<sup>225</sup> Section 50-25.1-02 was also amended by section 2 of House Bill No. 1058, chapter 243.

- a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or
- b. Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.

~~5-~~ 6. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is an employee of a residential child care facility, a treatment or care center for mentally retarded, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.

~~5-1-~~ 7. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies ~~which they represent or shall serve without remuneration. In no event may an~~ An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.

~~6-~~ 8. "Neglected child" means a deprived child as defined in chapter 27-20.

~~7-~~ 9. "Protective services" includes services performed after an ~~investigation~~ assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.

~~8-~~ 10. "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible of a physician, a representative of a child-placing agency, a representative of the state department of health and consolidated laboratories, a representative of the ~~office of the~~ attorney general, a representative of the ~~department~~ superintendent of public instruction, a representative of the department of corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency ~~which they represent, or shall serve without remuneration. In no event may an~~ An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.

<sup>226</sup> SECTION 2. AMENDMENT. Section 50-25.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-04.1. State child protection team - How created - Duties.**

1. The department shall name the members of the state child protection team. The members must be appointed for three-year staggered terms. The member who represents the department shall serve as ~~chairperson~~ presiding officer and is responsible for the transmittal of all team reports made pursuant to this chapter. The ~~chairperson~~ presiding officer shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02; and 50-25.1-04; and 50-25.1-05.1.
2. Under procedures adopted by the team, it may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate. All reports or recommendations issued are subject to ~~the provisions of section 50-25.1-11,~~ except that the team shall make available information reflecting the disposition of reports of institutional child abuse or neglect, where the identity of persons reporting, and of the children and parents of children involved, is protected.
3. In every case of alleged institutional child abuse or neglect, the state child protection team shall make a determination that child abuse or neglect is or is not indicated. Upon a determination that institutional child abuse or neglect is indicated, the state child protection team promptly shall make a written report of the determination. When the subject of the report is a state-operated institution, the state child protection team promptly shall notify the governor of the determination.

SECTION 3. AMENDMENT. Section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05. Investigation Assessment.** The department, in accordance with rules adopted by the department, ~~shall~~ immediately ~~shall~~ initiate an ~~investigation assessment~~, or cause an ~~investigation assessment~~, of any report of child abuse or neglect including, when appropriate, the ~~investigation assessment~~ of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department; ~~or the department's designee~~, and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department; ~~department's designee~~, or appropriate law enforcement agency may interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. The department; ~~department's designee~~, or law enforcement agency may conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.

<sup>226</sup> Section 50-25.1-04.1 was also amended by section 8 of Senate Bill No. 2231, chapter 116.

**SECTION 4. AMENDMENT.** Section 50-25.1-05.05 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05.05. Interviews on school property.** The department; ~~department's designee~~, or appropriate law enforcement agency shall notify the school principal or other appropriate school administrator of its intent to conduct an interview on school property pursuant to section 50-25.1-05. The school administrator may not disclose the nature of the notification or any other related information concerning the interview to any person, including a person responsible for the child's welfare. The school administrator and department; ~~department's designee~~, or law enforcement agency shall make every effort to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school property.

**SECTION 5. AMENDMENT.** Section 50-25.1-05.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05.1. Determination of probable cause Services required - How determined.** Upon completion of the investigation assessment of the initial report of child abuse or neglect, a determination decision must be made that there does or does not exist probable cause to believe that child abuse or neglect is indicated whether services are required to provide for the protection and treatment of an abused or neglected child.

1. This determination is the responsibility of:
  - a. ~~The state child protection team in all cases of alleged institutional child abuse or neglect; and~~
  - b. ~~In all other cases of alleged abuse or neglect, by the department or the department's designee.~~
2. Probable cause to believe that child abuse or neglect is indicated A decision that services are required may not be ~~determined made~~ where the suspected child abuse or neglect arises solely out of conduct involving the legitimate practice of religious beliefs by a parent or guardian. This exception does not preclude a court from ordering that medical services be provided to the child where the child's life or safety requires it or the child is subject to harm or threatened harm.

**SECTION 6. AMENDMENT.** Section 50-25.1-05.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05.2. Report to the court - Entry of report in the child abuse information index.**

1. ~~The state child protection team, upon a determination that institutional child abuse or neglect is indicated, shall promptly make a written report of a determination of probable cause for child abuse or neglect to the juvenile court having jurisdiction in the matter. When the subject of the report is a state-operated institution, the state child protection team shall promptly notify the governor that such a report has been made to the juvenile court.~~
2. In all other cases, upon Upon a determination decision that probable cause exists to believe that child abuse or neglect is indicated services are

required, the department ~~or the department's designee~~ shall promptly shall make a written report of a determination of probable cause for child abuse or neglect ~~the decision~~ to the juvenile court having jurisdiction in the matter.

3. 2. The ~~state child protection team or the department or the department's designee, as applicable,~~ shall promptly shall file a report of a determination of probable cause for child abuse or neglect made decision that services are required under this section in the child abuse information index.

<sup>227</sup> SECTION 7. AMENDMENT. Section 50-25.1-05.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05.4. Department of ~~human services~~ to adopt rules for review of investigations of probable cause assessment findings. The department of ~~human services~~ shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse or neglect who is aggrieved by the conduct or result of the investigation of a probable cause finding of the suspected child abuse or neglect an assessment.

<sup>228</sup> SECTION 8. AMENDMENT. Section 50-25.1-05.5 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05.5. Child abuse information index - Establishment. The division of children and family services or other division as determined appropriate by the department shall maintain a child abuse information index of all reports of determinations of probable cause for child abuse or neglect decisions that services are required which are filed pursuant to section 50-25.1-05.2.

SECTION 9. AMENDMENT. Section 50-25.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-06.1. Caseload standards - Reimbursement. The department of ~~human services~~ shall adopt caseload standards establishing minimum staff to client ratios for the investigation assessment of reports of child abuse or neglect and the provision of protective services. Within the limits of legislative appropriation ~~therefor~~, the department of ~~human services~~ shall reimburse each county, upon claim being made by the county, for seventy-five percent of additional staff costs caused by the imposition of such caseload standards. Upon a determination that legislative appropriations are insufficient to reimburse each claiming county in the amount of seventy-five percent of such additional staff costs, the department of ~~human services~~ shall reimburse each claiming county for that percentage of additional staff costs which the appropriation is sufficient to defray.

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<sup>227</sup> Section 50-25.1-05.4 was also amended by section 10 of Senate Bill No. 2231, chapter 116.

<sup>228</sup> Section 50-25.1-05.5 was also amended by section 11 of Senate Bill No. 2231, chapter 116.

<sup>229</sup> **SECTION 10. AMENDMENT.** Section 50-25.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-09. Immunity from liability.** Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation or assessment, furnishing information ~~to an investigator~~, or in providing protective services under this chapter; is immune from any liability, civil or criminal, that otherwise might result from reporting the alleged case of abuse or neglect. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse or neglect must be presumed.

**SECTION 11. EFFECTIVE DATE.** This Act becomes effective on January 1, 1996.

Approved March 28, 1995

Filed March 28, 1995

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<sup>229</sup> Section 50-25.1-09 was also amended by section 12 of Senate Bill No. 2231, chapter 116.

# SALES AND EXCHANGE

## CHAPTER 473

### SENATE BILL NO. 2415

(Senators W. Stenehjem, Tennesfos)  
(Representatives Gorman, Mahoney)

## LEASED MOTOR VEHICLE REFUNDS

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to refunds on leased vehicles; and to amend and reenact section 51-07-16, subsection 1 of section 51-07-18, subsection 1 of section 51-07-19, and section 51-07-22 of the North Dakota Century Code, relating to repair, replacement, sale, and lease of returned passenger motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 51-07-16 of the North Dakota Century Code is amended and reenacted as follows:

**51-07-16. Definitions.** As used in sections 51-07-16 through 51-07-22, and unless the context ~~or subject matter~~ otherwise requires:

1. "Consumer" means the purchaser or lessee, other than for purposes of resale or lease, of a passenger motor vehicle normally used for personal, family, or household purposes. ~~"Consumer"~~ The term includes any person to whom the passenger motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to that passenger motor vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.
2. "Passenger motor vehicle" means a passenger motor vehicle as defined in section 39-01-01 or a truck with registered gross weight of ten thousand pounds [4536 kilograms] or less which is sold or leased in this state. ~~"Passenger motor vehicle"~~ The term does not include a house car, as defined in section 39-01-01.

<sup>230</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 51-07-18 of the North Dakota Century Code is amended and reenacted as follows:

1. If the manufacturer, its agent, or its authorized dealer is unable to make the passenger motor vehicle conform to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value of the passenger motor vehicle, after a

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<sup>230</sup> Section 51-07-18 was also amended by section 1 of House Bill No. 1285, chapter 474.

reasonable number of attempts, the manufacturer shall replace that passenger motor vehicle with a comparable passenger motor vehicle or accept return of the passenger motor vehicle from the consumer, and refund to the consumer the full purchase price, including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds must be made to the consumer, the lessor, and the lienholder, if any, as their interests may appear. A reasonable allowance for use is the amount directly attributable to use by the consumer before the consumer's first report of the nonconformity to the manufacturer, agent, or dealer, and during any subsequent period when the vehicle is not out of service for repair.

**SECTION 3.** A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

Refunds for leased passenger motor vehicles. In any case in which a refund is tendered by a manufacturer for a leased motor vehicle under section 51-07-18, the refund and rights of the motor vehicle lessor, lessee, and manufacturer are as follows:

1. The manufacturer shall provide to the lessee the sum of all payments previously paid to the motor vehicle lessor by the lessee less a reasonable allowance for the consumer's use of the vehicle. Payments include all cash payments, security deposits, and trade-in allowance, if any, tendered by the lessee to the motor vehicle lessor under the lease agreement.
2. The manufacturer shall provide to the motor vehicle lessor the sum of the following:
  - a. The lessor's actual purchase cost, less payments made by the lessee;
  - b. The freight cost, if applicable;
  - c. The cost for dealer or manufacturer installed accessories, if applicable; and
  - d. An amount equal to five percent of the lessor's actual purchase cost as provided in subdivision a. The amount in this subdivision is in lieu of any early termination costs or penalties described in the lease agreement.
3. Upon return of the passenger motor vehicle, the consumer's lease agreement with the lessor is terminated and no penalty for early termination may be assessed.
4. Any refund to be paid to the motor vehicle lessor must be made to the lessor and lienholder, if any, as their interests may appear.

**SECTION 4. AMENDMENT.** Subsection 1 of section 51-07-19 of the North Dakota Century Code is amended and reenacted as follows:

1. It is presumed that a reasonable number of attempts have been undertaken to make a passenger motor vehicle conform to the applicable express warranties, if:



- a. The same nonconformity has continued to exist, despite having been subject to repair more than three times by the manufacturer, its agent, or its authorized dealer, within the express warranty term or within one year of the date of original delivery of the passenger motor vehicle to a consumer, whichever is the earlier date.
- b. The passenger motor vehicle is out of service for repair for a cumulative total of at least thirty business days during the warranty term or in a year, whichever is less.

**SECTION 5. AMENDMENT.** Section 51-07-22 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**51-07-22. Resale of returned passenger motor vehicles - Penalty.**

1. A person may not sell or lease in this state a passenger motor vehicle that was returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22, unless the manufacturer provides:
  - a. The same express warranty it provided to the original purchaser, except the term of the warranty must be for at least twelve thousand miles or twelve months after the date of resale, whichever is earlier; and
  - b. The purchaser a statement on a separate document that must be signed by the manufacturer and the purchaser and must be in ten point, capitalized type, in substantially the following form:  
"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE DEFECTS COVERED BY THE MANUFACTURER'S EXPRESSED WARRANTY WERE NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY NORTH DAKOTA LAW".
2. A person may not ship or deliver for resale or lease in another state a passenger motor vehicle returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22 unless full disclosure of the reasons for return is made to any prospective buyer.
3. Violation of this section is a class B misdemeanor.

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 474****HOUSE BILL NO. 1285**  
(Representatives Kelsch, Stenehjem)**DEFECTIVE MOTOR VEHICLE REFUNDS**

AN ACT to amend and reenact subsection 1 of section 51-07-18 of the North Dakota Century Code, relating to refunds for defective passenger motor vehicles.

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

<sup>231</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 51-07-18 of the North Dakota Century Code is amended and reenacted as follows:

1. If the manufacturer, its agent, or its authorized dealer is unable to make the passenger motor vehicle conform to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value of the passenger motor vehicle, after a reasonable number of attempts, the manufacturer shall replace that passenger motor vehicle with a comparable passenger motor vehicle or accept return of the passenger motor vehicle from the consumer, and refund to the consumer the full purchase price, including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle not exceeding ten cents per mile [1.61 kilometers] driven or ten percent of the purchase price, whichever is less. Refunds must be made to the consumer, and lienholder, if any, as their interests may appear. A reasonable allowance for use is the amount directly attributable to use by the consumer before the consumer's first report of the nonconformity to the manufacturer, agent, or dealer, and during any subsequent period when the vehicle is not out of service for repair.

Approved March 7, 1995

Filed March 7, 1995

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<sup>231</sup> Section 51-07-18 was also amended by section 2 of Senate Bill No. 2415, chapter 473.

**CHAPTER 475****HOUSE BILL NO. 1315**

(Representatives Gorman, Koppelman)

**ADVERTISING REPRESENTATIONS OF VALUE**

AN ACT to amend and reenact section 51-12-09 of the North Dakota Century Code, relating to representation as to worth or value as false advertising.

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

**SECTION 1. AMENDMENT.** Section 51-12-09 of the North Dakota Century Code is amended and reenacted as follows:

**51-12-09. Representation as to worth or value.** For the purpose of sections 51-12-08 through 51-12-14 the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of ~~such~~ the advertisement in the locality wherein the advertisement is published.

No price may be advertised as a former price of any advertised thing unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the advertisement.

This section does not apply to any publisher, owner, or employee of a newspaper, magazine, broadcasting or cable station, advertising device, or other publication by any means of communication, who publishes an advertisement in good faith, without knowledge of its false, deceptive, or misleading character; nor to any owner, manager, or employee of an advertising agency or a printer that prepares, places, or prints an advertisement in good faith, without knowledge of its false, deceptive, or misleading character; nor to any employee of the person who offers the advertised thing if that employee in good faith relied on the statements of the person and did not have knowledge that the statements were false, deceptive, or misleading.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 476****HOUSE BILL NO. 1220**

(Representative Keiser)

(Senator Krebsbach)

**CREDIT SERVICE CHARGE LIMITATIONS**

AN ACT to amend and reenact section 51-14-03 of the North Dakota Century Code, relating to the limitation on credit service charges.

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

**SECTION 1. AMENDMENT.** Section 51-14-03 of the North Dakota Century Code is amended and reenacted as follows:

**51-14-03. Limitation of credit service charge.** A seller may, in a revolving charge agreement, contract for and, if so contracted for, the seller or holder thereof may charge, receive, and collect the service charge authorized by this section. The service charge may not exceed ~~one and one-half percent per month~~ the amount agreed to by the parties computed on the outstanding indebtedness from month to month. In the event any payment by a buyer is insufficient to pay both the credit service charge and that portion of the outstanding indebtedness then due, such payments must first be applied to the credit service charge then due.

Approved March 31, 1995  
Filed March 31, 1995

# SOCIAL SECURITY

## CHAPTER 477

### SENATE BILL NO. 2457

(Senators St. Aubyn, DeMers, Holmberg, W. Stenehjem)

## JOB SERVICE PROPERTY SALE

AN ACT to amend and reenact section 1 of chapter 495 of the 1993 Session Laws, relating to the sale of property by job service North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 1 of chapter 495 of the 1993 Session Laws is amended and reenacted as follows:

**SECTION 1. Sale of property by job service North Dakota - Appropriation.** The state of North Dakota acting through job service North Dakota is hereby authorized to sell and convey all of lot two of the replat of lots b and c of the replat of block 1, Drees second addition to Grand Forks, North Dakota, and the east two hundred feet of lot "C" replat of block 1 Drees second addition to Grand Forks, North Dakota. Job service North Dakota may cause the above-described real property to be sold in the manner prescribed by ~~sections~~ section 54-01-05.1 and 54-01-05.2. The provisions of ~~section~~ sections 54-01-05.2 and 54-01-05.5 do not apply to the sale and conveyance authorized by this Act. Proceeds from the sale must be used as authorized and directed by law. Proceeds from the sale are hereby appropriated for acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota.

Approved March 17, 1995

Filed March 20, 1995

**CHAPTER 478****HOUSE BILL NO. 1374**

(Representative Keiser)

**LANDMAN SERVICES EXCLUDED UNDER  
UNEMPLOYMENT COMPENSATION**

AN ACT to create and enact a new subdivision to subsection 18 of section 52-01-01 of the North Dakota Century Code, relating to exclusions from the definition of employment for unemployment compensation purposes.

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

**SECTION 1.** A new subdivision to subsection 18 of section 52-01-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Service performed for a private for-profit person or entity by an individual as a landman if substantially all remuneration paid in cash or otherwise for the performance of the service is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and the services are performed under a written contract between the individual and the person for whom the services are performed which provides that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract. For purposes of this subdivision, "landman" means a land professional who has been engaged primarily in:

- (1) Negotiating the acquisition or divestiture of mineral rights;
- (2) Negotiating business agreements that provide for the exploration for or development of minerals;
- (3) Determining ownership of minerals through research of public and private records;
- (4) Reviewing the status of title, curing title defects, and otherwise reducing title risk associated with ownership of minerals;
- (5) Managing rights or obligations derived from ownership of interests and minerals; or
- (6) Activities to secure the unitization or pooling of interests in minerals.

Approved April 4, 1995  
Filed April 4, 1995

## CHAPTER 479

### SENATE BILL NO. 2134

(Senator Krebsbach)

(At the request of Job Service North Dakota)

## UNEMPLOYMENT COMPENSATION BENEFIT ELIGIBILITY

AN ACT to amend and reenact sections 52-01-03 and 52-06-01 of the North Dakota Century Code, relating to disclosure of information and eligibility for unemployment compensation benefits.

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

**SECTION 1. AMENDMENT.** Section 52-01-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**52-01-03. Disclosure of information.** Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or claimant's legal representative must be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to ~~such~~ the claim. Subject to ~~such~~ restrictions as the bureau by rule may prescribe, ~~such~~ the information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and ~~such~~ the recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with ~~such~~ the request, may transmit any ~~such~~ report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide the workers compensation bureau, the state ~~labor~~ commissioner of labor, the department of economic development and finance, ~~and~~ the state tax commissioner, and the North Dakota occupational information coordinating committee with information obtained pursuant to the administration of

the North Dakota Unemployment Compensation Law. Any information so provided may be used only for the purpose of administering the duties of the workers compensation bureau, the state ~~labor~~ commissioner of labor, the state department of economic development and finance, ~~and~~ the state tax commissioner, ~~and the North Dakota occupational information coordinating committee.~~ The bureau may provide any state agency or a private entity with the names and addresses of employing units for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workers compensation bureau, or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

**SECTION 2. AMENDMENT.** Section 52-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**52-06-01. Conditions required to be eligible for benefits.** An unemployed individual is eligible to receive benefits with respect to any week only if the bureau finds that:

1. ~~He~~ The individual has made a claim for benefits with respect to such week in accordance with such regulations as the bureau may prescribe;
2. ~~He~~ The individual has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the bureau may prescribe, except that the bureau may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of the North Dakota Unemployment Compensation Law; provided, that no such regulation shall conflict with section 52-06-03;
3. ~~He~~ The individual is able to work and is available for suitable work and actively seeking work; provided,
  - a. That notwithstanding any other provisions in this section, no otherwise eligible individual may be denied benefits for any week because the individual is in training with the approval of the bureau by reason of the application of provisions of this subsection relating to availability for work and to active search for work, or the provisions of subsection 3 of section 52-06-02 relating to disqualification for benefits for failure to apply for, or a refusal to accept, suitable work;
  - b. That no claimant may be considered ineligible in any week of unemployment for failure to comply with this subsection, if the



failure is due to an illness or disability not covered by workers' compensation insurance and which occurred after the claimant has registered for work and no work has been offered the claimant which is suitable;

4. ~~He~~ The individual has been unemployed for a waiting period of one week. No week may be counted as a week of unemployment for the purposes of this subsection:
  - a. Unless it occurs within the benefit year which includes the week with respect to which ~~he~~ the individual claims payment of benefits;
  - b. If benefits have been paid with respect thereto;
  - c. Unless the individual was eligible for benefits, with respect thereto as provided in this section and section 52-06-02;
5. The individual participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the bureau, unless the bureau determines that:
  - a. The individual has completed these services; or
  - b. There is justifiable cause for the claimant's failure to participate in these services.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 480

## SENATE BILL NO. 2135

(Senator Tennefos)

(At the request of Job Service North Dakota)

## JOB SERVICE ADMINISTRATION AND FUNDS

AN ACT to amend and reenact sections 52-02-09, 52-02-10, 52-02-11, 52-03-01, 52-03-03, 52-03-04, subsection 4 of section 52-03-07, and section 52-04-22 of the North Dakota Century Code, relating to the job service administration, unemployment compensation administration, and federal advance interest repayment funds; and to repeal section 52-03-02 of the North Dakota Century Code, relating to the state treasurer as treasurer of the unemployment compensation and federal advance interest repayment funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**52-02-09. Unemployment compensation Job service administration fund - Additional bond required of treasurer.** There must be maintained in the state treasury a special fund to be known as the unemployment compensation administration fund. The job service administration fund consists of all money received from the United States of America, or any agency thereof, and all money received from any other source for administrative and program purposes except for the funds created by sections 52-03-01, 52-04-22, and 52-09-05. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota. All money deposited or paid into this fund and the employment service account thereof must be continuously available to the bureau for expenditure in accordance with the provisions of this law, and may not lapse at any time or be transferred to any other fund. The fund must consist of any money appropriated by this state in accordance with section 52-02-11; all money received from the United States of America, or any agency thereof, and all money received from any other source for the administration of the North Dakota Unemployment Compensation Law; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or any insurance policy or from other sources for losses sustained by the unemployment compensation job service administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of this law. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to subsection 4 of section 52-03-07 must remain a part of the unemployment compensation fund and must be used only in accordance with the conditions specified in section 52-03-07. All moneys in this fund must be deposited and administered in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. The fund is subject to audit by the United States treasury department, or its representatives, and no audit by the state auditor shall be required. The state treasurer shall give a separate and additional bond conditioned for the faithful performance of his duties in connection with the unemployment compensation

administration fund in an amount to be fixed by the bureau and in a form prescribed by law or approved by the attorney general. The premiums for such bond must be paid from the moneys in the unemployment compensation administration fund:

**SECTION 2. AMENDMENT.** Section 52-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**52-02-10. Expenditure of moneys in fund.** All moneys in the job service administration fund received from the United States or any agency thereof for the administration of the North Dakota Unemployment Compensation Law, or which may be appropriated by the state for any of the purposes described in the North Dakota Unemployment Compensation Law, must be expended solely for the purposes and in the amounts found necessary by the social security board of the United States or any other agency of the United States succeeding thereto, for the proper and efficient administration of the North Dakota Unemployment Compensation Law.

**SECTION 3. AMENDMENT.** Section 52-02-11 of the North Dakota Century Code is amended and reenacted as follows:

**52-02-11. Reimbursement of funds.** The state of North Dakota recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and be applied to the replacement of, any moneys received after July 1, 1941, from the social security board under title III of the Social Security Act [42 U.S.C. 501 et seq.], any unencumbered balances relating to the administration of the North Dakota Unemployment Compensation Law in the unemployment compensation job service administration fund as of that date, any moneys thereafter granted to the state pursuant to the provisions of the Wagner-Peyser Act [48 Stat. 113; 29 U.S.C. 49-49k], and any moneys made available by the state or its political subdivisions and matched by such moneys granted to the state pursuant to the provisions of the Wagner-Peyser Act, which the social security board finds have been lost or have been expended because of any action or contingency for purposes other than or in amounts in excess of those found necessary for the proper administration of the North Dakota Unemployment Compensation Law by the social security board. Such moneys must be replaced promptly by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation job service administration fund for expenditure as provided in section 52-02-09. The amount of money required for such replacement must be reported promptly by the bureau to the governor and the governor shall report the same to the legislative assembly. This section may not be construed to relieve the state of North Dakota of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the Social Security Act [42 U.S.C. 501 et seq.].

**SECTION 4. AMENDMENT.** Section 52-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**52-03-01. Unemployment compensation fund - Maintaining and administering - What constitutes.** A special fund, separate and apart from all public moneys or funds of this state, ~~and~~ known as the "unemployment compensation fund", must be ~~maintained in the state treasury and must be~~ administered by the bureau exclusively for the purposes of the North Dakota Unemployment Compensation Law. This fund must consist of:

1. All contributions collected under the North Dakota Unemployment Compensation Law.
2. All fines collected pursuant to the provisions of the North Dakota Unemployment Compensation Law.
3. Interest earned upon any moneys in the fund.
4. Any property or securities acquired through the use of moneys belonging to the fund.
5. All earnings of such property or securities.
6. All money recovered on losses sustained by the fund.
7. All money received from the federal unemployment account in the unemployment trust fund in accordance with title XII of the Social Security Act [42 U.S.C. 1321 et seq.], as amended.
8. All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act [42 U.S.C. 1103], as amended.
9. All money received from the federal government as reimbursements pursuant to section 204 of the Federal-State Extended Compensation Act of 1970 [Pub. L. 91-373; 84 Stat. 708-712; 26 U.S.C. 3304 note].
10. All money received for the fund from any other source.

All moneys in the fund must be mingled and undivided.

**SECTION 5. AMENDMENT.** Section 52-03-03 of the North Dakota Century Code is amended and reenacted as follows:

**52-03-03. Accounts to be kept within unemployment compensation fund.** The ~~state treasurer~~ bureau shall maintain within the unemployment compensation fund the following separate accounts:

1. The clearing account.
2. The unemployment trust fund account.
3. A benefit account.

All moneys payable to the fund, upon receipt thereof by the bureau, must be ~~forwarded to the state treasurer who shall deposit them~~ deposited immediately in the clearing account. Refunds payable pursuant to section 52-04-14 may be paid from the clearing account ~~upon warrants issued by the treasurer under the direction of the bureau.~~ After the clearance thereof, all other moneys in the clearing account must be deposited immediately with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the Social Security Act [42 U.S.C. 1104], as amended, notwithstanding any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary. The benefit account must consist of all moneys requisitioned from the state's account in the unemployment trust fund.

Except as otherwise provided in the North Dakota Unemployment Compensation Law, moneys in the clearing and benefit accounts ~~may~~ must be deposited by the ~~state treasurer, under the direction of the~~ bureau; in separate interest-bearing accounts at the Bank of North Dakota, but no public deposit insurance charge or premium may be paid out of the fund.

**SECTION 6. AMENDMENT.** Section 52-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**52-03-04. Requisitioning and expenditure of funds from various accounts.** Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and for refunds pursuant to subdivision f of subsection 18 of section 52-01-01 and section 52-04-14, except that money credited to this state's account pursuant to section 903 of the Social Security Act [42 U.S.C. 1103], as amended, must be used exclusively as provided in subsection 3 of section 52-03-07. From time to time, the bureau shall requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof, the ~~state treasurer~~ bureau shall deposit such moneys in the benefit account and shall ~~issue his warrants for the payment of pay~~ benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account are not subject to any provision of law requiring specific appropriations or other formal release by state officers of money in their custody. ~~All warrants issued by the treasurer for the payment of benefits and refunds must bear the signature of the treasurer and the countersignature of a member of the bureau or its duly authorized agent for that purpose.~~ Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, either must be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the bureau, must be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund as provided in section 52-03-03.

**SECTION 7. AMENDMENT.** Subsection 4 of section 52-03-07 of the North Dakota Century Code is amended and reenacted as follows:

4. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the ~~unemployment compensation~~ job service administration fund, but, until expended, must remain a part of the unemployment compensation fund. The bureau shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

**SECTION 8. AMENDMENT.** Section 52-04-22 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**52-04-22. Federal advance interest repayment fund - Appropriation.** There is created the federal advance interest repayment fund, to which will be credited all assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund must consist of all interest

collected on delinquent contributions, all penalties provided by the Unemployment Compensation Law, and funds borrowed from sources other than federal advances which are placed in this fund. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota or invested in deposits of the Bank of North Dakota.

Moneys in this fund may also be used for the purpose of repaying funds placed in this fund which are borrowed from sources other than federal advances and for the purpose of paying interest due on other than federal advances. However, moneys in this fund may not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau.

Moneys in this fund may also be used for the purpose of paying interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund may be used for the purpose of paying the costs of repair, renovation, or alteration of job service owned office facilities. Moneys in this fund may be used for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund are hereby appropriated for the purposes specified in this section including the purpose of paying interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund are appropriated for the purpose of paying the costs of repair, renovation, or alteration of job service owned office facilities. Moneys in this fund are appropriated for the purpose of paying the replacement rate charged for use of state fleet vehicles.

**SECTION 9. REPEAL.** Section 52-03-02 of the North Dakota Century Code is repealed.

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 481

## SENATE BILL NO. 2466

(Senator Andrist)

UNEMPLOYMENT COMPENSATION CONTRIBUTION  
RATES

AN ACT to amend and reenact subsection 3 of section 52-04-05 and subsection 3 of section 52-04-06 of the North Dakota Century Code, relating to determination of contribution rates and variations in the standard rate of contributions for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 52-04-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. a. Except as otherwise provided in this subsection, an employer's rate may not be ~~reduced below~~ less than the maximum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. However, an employer in construction services must be assigned the maximum rate or seven percent, whichever is greater, for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year.
- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
  - (1) For each calendar year new employers must be assigned a rate of two and ~~eight-tenths~~ two-tenths percent unless the employer is classified in construction services. However, an employer must be assigned the maximum rate for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.

- (2) New employers in construction services ~~must be assigned the maximum rate. However, an employer who becomes subject to the North Dakota Unemployment Compensation Law after December 31, 1989, who is classified in construction services pursuant to subdivision C of the standard industrial classification manual~~ must be assigned a rate of nine seven percent or the maximum rate, whichever is greater.
- (3) Assignment by the bureau of an employer's industrial classification for the purposes of this ~~paragraph~~ section must be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.

**SECTION 2. AMENDMENT.** Subsection 3 of section 52-04-06 of the North Dakota Century Code is amended and reenacted as follows:

3. Employers must be assigned to the groups in the rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio employers assigned to the first rate group. Each successively ranked employer must be assigned to the groups in the rate schedule so that those employers reporting seventy-eight percent of the eligible employer's prior year's taxable wages are equally distributed in those rate groups at or below the average rate required of employers eligible for experience rating or the minimum rate group, whichever is greater, and twenty-two percent of those wages are equally distributed in those the remaining rate groups ~~above the average rate~~.

Approved April 17, 1995

Filed April 18, 1995



## CHAPTER 482

### HOUSE BILL NO. 1125

(Representative Martinson)

(At the request of Job Service North Dakota)

## OASIS BENEFITS AND INVESTMENTS

AN ACT to amend and reenact subsection 2 of section 52-09-06 and subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to the investment of funds and the calculation of primary insurance benefits under the old-age and survivor insurance system.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 52-09-06 of the North Dakota Century Code is amended and reenacted as follows:

2. To invest ~~such any~~ any portion of ~~said~~ the trust funds ~~as that~~ that are not needed for current payment of benefits under this chapter and costs of administration of this chapter and chapter 52-10 in ~~interest-bearing bonds issued by, treasury bills, notes, or other securities that are direct obligations of the treasury of the United States; or by the state of North Dakota; or in bonds, certificates of indebtedness, or warrants of any political subdivision of the state which constitute the general or contingent general obligations of the issuing tax authority; bonds, debentures, or notes issued by a federal farm credit bank, the federal national mortgage association, or the federal home loan mortgage corporation; deposits of the Bank of North Dakota; or deposits of any federally insured bank, federal savings bank, or savings and loan association in an amount not exceeding the maximum insurance available for each deposit~~ and to sell and dispose of the same when needed for the payment of benefits under this chapter and costs of administration of this chapter and chapter 52-10.

**SECTION 2. AMENDMENT.** Subsection 9 of section 52-09-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Primary insurance benefit" means the sum of the following:
  - a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
  - (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
  - b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and

- c. (1) Effective ~~July~~ August 1, ~~1993~~ 1995, three hundred ~~forty~~ eighty dollars; or
- (2) Effective ~~July~~ August 1, ~~1994~~ 1996, ~~three~~ four hundred ~~sixty~~ dollars.

Approved March 14, 1995

Filed March 14, 1995

# **SPORTS AND AMUSEMENTS**

## **CHAPTER 483**

### **HOUSE BILL NO. 1410**

(Representative Poolman)

### **ATHLETIC ADVISORY BOARD FEES**

AN ACT to create and enact a new subsection to section 53-01-07 of the North Dakota Century Code, relating to the establishment of a fee to pay for expenses of members of the athletic advisory board.

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

**SECTION 1.** A new subsection to section 53-01-07 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Establish by rule a fee based on the percentage of gross revenues from any boxing, kickboxing, or sparring exhibition held in this state to pay for the expenses of members of the athletic advisory board. A fee established under this subsection may not exceed one percent of the gross revenues of the exhibition from any and all sources including cable television and pay-per-view telecasts of the event, exclusive of any federal tax thereon.

Approved March 6, 1995

Filed March 7, 1995

**CHAPTER 484****HOUSE BILL NO. 1168**

(Judiciary Committee)

(At the request of the State Gaming Commission)

**GAMES OF CHANCE LAW REVISIONS**

AN ACT to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to interest and penalty for licensed gaming organizations; to amend and reenact section 53-06.1-01, subsection 2 of section 53-06.1-01.1, sections 53-06.1-02, 53-06.1-03, 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, 53-06.1-05.1, 53-06.1-06, 53-06.1-06.1, 53-06.1-07, 53-06.1-07.1, 53-06.1-07.2, 53-06.1-07.3, 53-06.1-08, 53-06.1-09, 53-06.1-10, 53-06.1-10.1, 53-06.1-11, 53-06.1-11.1, 53-06.1-12, 53-06.1-12.1, 53-06.1-12.2, 53-06.1-13, 53-06.1-14, 53-06.1-15, 53-06.1-15.1, 53-06.1-15.2, 53-06.1-15.4, 53-06.1-16, 53-06.1-16.1, 53-06.1-16.2, and 53-06.1-17 of the North Dakota Century Code, relating to definitions under the games of chance laws, qualifications of gaming commission members, use of net proceeds, allowable games and prize limitations, conditional site authorization, two organizations conducting games on a site, license fees, rent limits, regulation of the number of twenty-one tables and sites, persons restricted from being involved in gaming equipment, history background checks, local work permits, allowed games of chance, limitations on hours and participation in games, poker, calcuttas, punchboards, pull tabs, sports pools, twenty-one, raffles, gross proceeds and expenses, organizations using money in certain political activities, gaming taxes, deposits, examination of books and records, distributors and manufacturers, form and display of a license and local permit, reimbursing the attorney general for inspection costs, the statute of limitations, conditional licenses, violation of a law or rule, thefts and fraudulent schemes, ineligibility for local permits and rules; to repeal sections 53-06.1-02.1, 53-06.1-04, 53-06.1-05, and 53-06.1-08.1 of the North Dakota Century Code, relating to waiver of the two-year activity requirement for local permits, local permits, and pull tab prizes; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 53-06.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-01. Definitions.** As used in this chapter:

1. "Adjusted gross proceeds" means, except for ~~games of draw poker and stud poker authorized under section 53-06.1-07.2~~, gross proceeds less cash prizes ~~and the price, cost~~ of merchandise prizes, ~~less the pull tab excise tax imposed by section 53-06.1-12.2~~, and ~~less the amount of~~ federal excise tax and interest imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401]. In the ~~games of draw poker and stud poker~~, "adjusted gross proceeds" means the time buy-ins ~~or and tournament fees collected by the licensed organization~~.
2. "Charitable organization" means an organization incorporated as a nonprofit corporation whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons,

prevention of cruelty to children or animals, or other condition of public concern ~~within this state~~, which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.

3. ~~"Civic and service organization" means any branch, lodge, or chapter of a nonprofit national or state organization which an organization incorporated as a nonprofit corporation whose primary purpose is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a civic or and service purpose within this state; activity as a sertoma, lion, rotary, jaycee, kiwanis organization, or similar organization, and which has been actively fulfilling its primary purpose within this state for the two immediately preceding years. The term also means a similar local nonprofit organization; not affiliated with a state or national organization; which is recognized by resolution adopted by the governing body of the city in which the organization conducts its principal activities; or by the governing body of a county if the organization conducts its principal activities outside the limits of a city. Such organization must have been actively fulfilling its primary purpose within this state for the two immediately preceding years.~~
4. "Commission" means the state gaming commission.
5. ~~"Distributor" means a person that sells, markets, or otherwise distributes gaming equipment usable in the lawful conduct of games of chance under this chapter. The term does not include a resident printer who prints raffle tickets at the request of a licensed organization or an organization that has been issued a local permit; and who sells or otherwise distributes such raffle tickets to the organization.~~
6. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" are:
  - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
  - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.
  - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
    - (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
    - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
    - (3) Assistance to libraries and museums.
    - (4) Assistance for the performing arts and humanities.

- (5) Preservation of cultural heritage.
  - (6) Youth community and athletic activities.
  - (7) Adult amateur athletic activities within the state, such as softball, including uniforms and equipment.
  - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
  - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Relief to an individual or family suffering from poverty or homelessness.
  - (2) Encouragement and enhancement of the active participation of the elderly in our society.
  - (3) Services to the abused.
  - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
  - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
  - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
  - (7) Funds for emergency relief and volunteer services.
  - (8) Funds to nonprofit nursing homes and other nonprofit medical facilities.
  - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.
  - (10) Funds for crime prevention, fire protection and prevention, and public safety.
  - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, health and economic interests of injured or disabled veterans.
- e. Uses that are fraternal related which include disbursements for:
- (1) Fraternal uses, consistent with uses enumerated in subdivisions a through m, specified by an organization's

constitution, charter, articles of incorporation, or bylaws and not of direct benefit to the eligible organization.

- (2) Fraternal uses or disbursements to perpetuate the memory and history of the dead.
- f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof which include disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants are excluded from receiving net proceeds ~~under this subdivision or any other provision of this chapter.~~
- g. The erection or maintenance of public buildings or works, public utilities, or public waterworks.
- h. Uses otherwise lessening the burden of government which include disbursements to any entity that is normally funded by the city, county, state, or United States government and disbursements directly to a city, county, state, or the United States government, or any agency, political subdivision, or instrumentality thereof.
- i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the losses uncompensated by insurance.
- j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.
- k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies as a community service project if it promotes the common good, enhances the social welfare of the community, and benefits an indefinite number of persons. The specific goals of a community service project may be to develop or promote public services in areas such as education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, and health. Uses that directly benefit a chamber of commerce do not qualify.
- l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
  - (1) Funds for adult bands, including drum and bugle corps.
  - (2) Funds for trade shows and conventions conducted in this state.
  - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife propagation and habitat enhancement program.

(4) Funds for public transportation and recreation.

(5) Funds for preservation and cleanup of the environment.

- m. To the extent ~~the~~ net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, the organization may establish a special trust fund as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games of ~~chance~~ or dissolve. ~~The commission may adopt rules for the establishment of special trust funds:~~

Such uses do not include the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned or leased by an organization unless it is used exclusively for one or more of ~~the stated~~ eligible uses. Except for uses related to an eligible organization's primary purpose, eligible uses do not include any activities consisting of attempts to influence legislation or promote or oppose referendums or initiatives. Eligible uses do not include participation in any political campaign on behalf of any active official or person who is or has been a candidate for public office. ~~In addition, the commission may adopt rules to limit or restrict eligible use disbursements to ensure that net proceeds are best utilized for educational, charitable, fraternal, religious, patriotic, or other public-spirited purposes.~~

7. "Educational organization" means any nonprofit public or private elementary or secondary school, two-year or four-year college, or university in this state which has been active for the two immediately preceding years.
8. "Eligible organization" means ~~bona fide nonprofit~~ veterans, charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations ~~as defined by this section~~, which may be licensed by the attorney general or issued a local permit by the governing body of a city or county to conduct games of ~~chance under this chapter~~.
9. "Fraternal organization" means an organization ~~within this state~~, except a college ~~and or~~ high school ~~fraternities~~ fraternity, which is incorporated as a nonprofit corporation and which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have been actively fulfilling its primary purpose within this state for the two immediately preceding years, and must have obtained an advance ruling or final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code. However, if the organization's gross receipts in each tax year are normally not more than twenty-five thousand dollars, the organization is not required to have obtained an advance ruling or final determination from the internal revenue service.
10. "Games" means games of chance.



- ~~11.~~ 11. "Gross proceeds" means all moneys collected or received from conducting games of ~~chance~~ and from ~~games of chance~~ admissions.
- ~~11.~~ 12. "Licensed organization" means an eligible organization licensed by the attorney general to conduct bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, poker, paddlewheels, and sports pools.
- ~~12.~~ 13. "Local permit" means a permit issued to a nonprofit organization recognized as a public-spirited organization by a governing body of a city or county that authorizes the organization to conduct only bingo, raffles, and sports pools in that city or county.
- ~~13.~~ 14. "Manufacturer" means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a product of any ~~implement of gambling equipment~~ usable in the lawful conduct of games of ~~chance~~ under this chapter. The term does not include a resident printer who prints raffle tickets at the request of a licensed organization or an organization that has been issued a local permit, and who sells or otherwise distributes such raffle tickets to the organization. For a pull tab and bingo card dispensing device, a manufacturer is the person who owns the rights to the proprietary operating software.
- ~~14.~~ 15. "Manufacturer's distributor" means a wholesaler of a manufacturer of ~~electronic mechanical~~ pull tab dispensing devices and ~~associated equipment who maintains a parts inventory~~, who sells at wholesale dispensing devices and associated equipment directly to a licensed distributor, and who does not sell or otherwise provide these items to a ~~licensed~~ an eligible organization.
- ~~15.~~ 16. "Member" means a person who has qualified for and been admitted to membership in an eligible organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement, and who pays regular monthly, annual, or other periodic dues or is a fully paid life member of the ~~eligible organization~~. "Member" includes a member of an auxiliary members organization, but excludes a social and honorary members member.
- ~~16.~~ 17. "Net proceeds" means ~~the adjusted gross proceeds less such allowable expenses and taxes as are specifically authorized under this chapter the gaming tax.~~
- ~~17.~~ 18. "Person" means any person, firm, partnership, corporation, limited liability company, association, or organization.
- ~~18.~~ 19. "Public safety organization" means an organization incorporated as a nonprofit corporation whose primary purpose is to actively engage in firefighting, ambulance service, or similar disaster assistance, which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.
- ~~19.~~ 20. "Public-spirited organization" means an organization incorporated as a nonprofit corporation whose primary purpose is for scientific research, amateur sports competition, safety, arts, agriculture, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, or similar organization, and which does

not meet the definition of veterans, fraternal, charitable, educational, religious, civic and service, or public safety organization, which has been actively fulfilling its primary purpose within this state for the two immediately preceding years ~~and is recognized by the governing body of a city or county by resolution as public spirited~~. However, a nonprofit organization recognized as a public-spirited organization by a governing body of a city or county for obtaining a local permit does not need to meet this definition.

20. "Pull tab" means the game piece used in deals of pull tabs.
21. "Religious organization" means ~~any~~ a nonprofit organization, church, body of communicants, or group gathered in common membership incorporated as a nonprofit corporation whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances which has been actively ~~so~~ gathered or united in this state for the two immediately preceding years.
22. "Veterans organization" means any congressionally chartered organization within this state, or any branch or lodge or chapter of a nonprofit national or state organization within this state, the membership of which consists of individuals who were members of the armed services or forces of the United States. The organization must have been actively fulfilling its primary purpose in this state for the two immediately preceding years and must have obtained an advance ruling or final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code. However, if the organization's gross receipts in each tax year are normally not more than twenty-five thousand dollars, the organization is not required to have obtained an advance ruling or final determination from the internal revenue service.

**SECTION 2. AMENDMENT.** Subsection 2 of section 53-06.1-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of gaming in this state. A person is also ineligible if that person has been convicted of a felony criminal offense or has pled guilty or been ~~convicted~~ found guilty of any violation of chapter 12.1-06, 12.1-08, 12.1-09, 12.1-10, 12.1-11, 12.1-12, 12.1-22, 12.1-23, 12.1-24, 12.1-28, 53-06.1, or 53-06.2, or has pled guilty or been ~~convicted~~ found guilty of any violation of section 6-08-16 or 6-08-16.2, or has pled guilty or been ~~convicted~~ found guilty of any offense or violation that has a direct bearing on the person's fitness to be involved in gaming, or who has committed an equivalent offense or violation of the laws of another state or of the United States. A person who has a financial interest in gaming cannot be a member of the commission and cannot be employed by the commission. For the purpose of this subsection, a financial interest includes the receiving of any direct payment from an eligible organization for property, services, or facilities provided to that organization. Failure to maintain compliance with this subsection is

grounds for removal from the commission or from employment with the commission.

**SECTION 3. AMENDMENT.** Section 53-06.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-02. Organizations eligible under chapter - Use of net proceeds.** Nonprofit veterans, charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations; ~~as defined by this chapter,~~ are eligible to conduct games of ~~chance~~ under this chapter. ~~The net proceeds of such games of chance~~ A licensed organization must be devoted devote net proceeds to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses ~~as defined by this chapter.~~ Notwithstanding any other provision of this chapter, an ~~An~~ organization that has ~~been issued~~ a local permit may use the net proceeds to directly benefit the organization.

<sup>232</sup> **SECTION 4. AMENDMENT.** Section 53-06.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-03. Exceptions for raffles, sports pools, and bingo - City and county local permits and site authorizations - Licensure by attorney general - Fees - Suspension and revocation.**

1. A nonprofit organization shall obtain a local permit as follows:

- a. A nonprofit organization recognized as a public-spirited organization by the governing body of a city or county may ~~obtain~~ apply for a local permit to conduct only raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate prizes do not exceed six thousand dollars annually, and to conduct sports pools; for professional sports only; ~~in which the total wagers do not exceed five hundred dollars for each pool.~~ A governing body may issue a local permit for these games to be held at designated times and places. If the nonprofit organization is a North Dakota college or university fraternity or sorority, the organization shall include a signed acknowledgement by the administration of the college or university that the applicant is a recognized fraternity or sorority.
- b. A nonprofit organization that conducts a city or county festival or celebration may be recognized as a public-spirited organization by the governing body of a city or county and may obtain a local permit to conduct raffles in which the primary prize does not exceed one thousand dollars and the aggregate prizes do not exceed two thousand dollars. For purposes of this subdivision, a "city or county festival or celebration" means an event:

(1) In celebration of local heritage, anniversary of establishment of the political subdivision, or other significant local event

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<sup>232</sup> Section 53-06.1-03 was also amended by section 1 of House Bill No. 1355, chapter 485.

recognized as public spirited by the governing body of the city or county; and

(2) Supported by significant community participation:

- c. ~~To obtain a local permit, the nonprofit~~ An eligible organization shall apply directly to the governing body of the city or county in which the site where the gaming activity to be conducted is located where the raffle, sports pool, or bingo activity will be conducted or, if the raffle, sports pool, or bingo activity is conducted at a site located in a county but outside the limits of a city, the organization shall apply to the board of county commissioners. Application for a local permit must be made on forms provided a form prescribed by the attorney general. Approval may be granted at the discretion of the governing body. The A governing body may by ordinance or resolution establish a local permit fee not to exceed twenty-five dollars for each local permit. A local permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.
- d. c. For purposes of issuing a local permit, the determination of what is a "public-spirited organization" is within the sole discretion of the governing body of the city or county.
- 2. ~~Except as otherwise provided in this section, an~~ An eligible organization desiring to be licensed shall apply for a license to conduct lawful games of chance shall apply annually for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred fifty dollar license fee; except the fee is one hundred dollars for an organization whose average annual gross proceeds do not exceed twenty-five thousand dollars. An organization shall provide clear and convincing evidence that the organization qualifies as an eligible organization. If a licensed organization amends its primary purpose as stated in its articles of incorporation or changes its basic character in a material manner, the organization shall reapply for licensure with the attorney general. by:
  - a. First securing approval for a site authorization from the governing body of the city or county in which the proposed site is located. Approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form that is to accompany the license application to the attorney general for final approval. A governing body of a city or county may not require an eligible organization to donate net proceeds directly to the city, county, or related political subdivision as a condition for receiving a site authorization from the city or county. A governing body may charge a one hundred dollar fee for a site authorization; and
  - b. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and including with the application a one hundred fifty dollar license fee. An organization shall sufficiently document that it qualifies as an eligible organization. If a licensed organization amends its primary purpose as stated in its articles of incorporation or changes its basic character in a material manner, the organization shall reapply for licensure.

3. The attorney general shall license an eligible organizations that conform to the requirements of this chapter by issuing licenses organization as follows:
  - a. A class A license to an eligible organization that is a fraternal, veterans, or civic and service organization.
  - b. A class B license to an eligible organization that is a charitable, religious, educational, public-spirited, or public safety organization. The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license. An eligible organization that qualifies for a class A license may not also be issued a class B license.
  - c. The commission may establish by rule no more than two additional classes of licenses based on the frequency of gaming, the types of games of chance conducted by the licensed organization, and the adjusted gross proceeds collected or expected to be collected by the licensed organization.
4. A licensed organization may conduct games of chance only on an authorized site set forth in the application as follows:
  - a. A licensed organization shall first secure approval of the proposed site at which it intends to conduct lawful games of chance from the governing body of the city, if within city limits; or the county, if outside city limits, where the site is located. This approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form which is to accompany the license application to the attorney general for final approval. The governing body may charge a one hundred dollar fee for the site authorization.
  - b. Rented premises are subject to rules adopted by the commission.
  - c. Only one licensed organization or organization that has been issued a local permit at a time may conduct games of chance at a specific an authorized site, except that a raffle drawing may be conducted for a special occasions occasion by a second organization that is a licensed organization or organization that has a local permit when one of the following these conditions are is met:
    - (1) When the area for the raffle drawing is physically separated from the area where gaming is games are conducted by the regular licensee.
    - (2) Upon request of the regular licensee and with the approval of the alcoholic beverage establishment, the licensee's license is suspended for that specific time of day by the attorney general or commission.
  - d. Licenses, rules of conduct and play, state gaming stamps, and state registration stamps must be displayed on forms and in the manner specified in rules adopted by the commission.

- c. b. ~~No licensed organization or closely connected licensed organizations as a unit may have more than thirty authorized sites unless granted a waiver by the attorney general. However, after~~ After June 30, 1995, no a licensed organization or closely connected licensed organizations as a unit may not have more than twenty-five authorized sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization willing to conduct gaming at a site for which a waiver is being sought, the attorney general may approve the waiver. The attorney general may not grant a licensed organization a waiver for more than five sites. Closely connected licensed organizations are two or more organizations which have unitary characteristics attributes that may include common primary purposes, members on boards of directors, officers, management, employees, bookkeepers, program services, integrations of gaming activities, and shared facilities.
5. The attorney general may, based on reasonable ground or upon written complaint, suspend, deny, or revoke under chapter 28-32, any license granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any gaming rule adopted under this chapter. Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02 may not have that license suspended, revoked, or denied in consequence of action taken under this subsection unless that organization conducts gaming ~~determined to be in violation of that violates~~ chapter 12.1-28 or subsection 1 of section 53-06.1-07.
6. The attorney general may impose monetary fines on licensed organizations, distributors, manufacturers' distributors, and manufacturers for failure to comply with this chapter or any gaming rule adopted under this chapter. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor or manufacturer's distributor is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine for each violation by a manufacturer is a minimum of five hundred dollars and may not exceed two hundred fifty thousand dollars. This fine may be in addition to or in lieu of a license suspension or revocation.

**SECTION 5. AMENDMENT.** Section 53-06.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-03.1. Bingo sites - ~~Rent must be reasonable~~ Limit on rent.** For all ~~purposes associated with the privilege of conducting games of chance at a site where bingo is the primary game of chance conducted; the monthly rent must be reasonable;~~

1. Except under subsection 3, if bingo is the primary game, the monthly rent must be reasonable.
2. If bingo is not the primary game, but is conducted in conjunction with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.

3. If bingo is conducted involving only a bingo card dispensing device and no other game is conducted, the monthly rent may not exceed two hundred twenty-five dollars.

SECTION 6. AMENDMENT. Section 53-06.1-03.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03.2. Twenty-one sites - Limit on rent. For ~~all purposes associated with~~ the privilege of conducting games of ~~chance~~ at a site other than a site where bingo is the primary game of ~~chance conducted~~, but where ~~the game of~~ twenty-one is conducted, the monthly rent may not exceed two hundred dollars multiplied by the number of tables on which ~~the game of~~ twenty-one is conducted.

SECTION 7. AMENDMENT. Section 53-06.1-03.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03.3. Pull tab sites - Limit on rent. For ~~all purposes associated with~~ the privilege of conducting games of chance at a site other than a site where bingo is the primary game of ~~chance conducted~~, ~~the monthly rent may not exceed~~:

1. If ~~the game of~~ twenty-one is conducted on ~~the a~~ site, in addition to the rent allowable for ~~the game of~~ twenty-one, the monthly rent may not exceed one hundred twenty-five dollars.
2. If ~~the game of~~ twenty-one is not conducted on ~~the a~~ site, the monthly rent may not exceed two hundred twenty-five dollars.

SECTION 8. AMENDMENT. Section 53-06.1-05.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-05.1. Regulation by city or county of number of twenty-one tables per site and number of sites per licensed organization. Cities, for sites within The governing body of a city limits, or counties, for sites outside city limits, county may establish by ordinance or resolution a maximum limit the number of tables for twenty-one per site and a maximum the number of sites upon which a licensed organization may conduct games of ~~chance~~ within the city or county.

<sup>233</sup> SECTION 9. AMENDMENT. Section 53-06.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-06. Persons permitted to conduct games of ~~chance~~ - ~~Gaming site~~ Site - Equipment - Compensation.

1. No person, except a member or employee of a licensed organization or an organization that has ~~been issued a local permit or a member of an organization auxiliary to a licensed organization or an organization that has been issued a local permit~~, may assist in the holding, operating, or conducting of any game of ~~chance under this chapter~~. In the conduct of conducting pull tabs or bingo through ~~an electronic mechanical a~~ dispensing device, the attorney general may allow ~~employees an~~

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<sup>233</sup> Section 53-06.1-06 was also amended by section 2 of House Bill No. 1355, chapter 485.

~~employee of licensed an alcoholic beverage establishments establishment~~ to provide limited assistance to a class B licensed organization whose adjusted gross proceeds does not exceed eighty thousand dollars per quarterly reporting period of operation or to any class A licensed organization. However, a volunteer of an eligible organization may sell raffle tickets.

2. Except when authorized by the attorney general, no ~~games of chance game~~ may be conducted with ~~any~~ gaming equipment other than ~~gaming equipment owned by an eligible organization, loaned to,~~ or rented at a reasonable rate by an eligible organization from an eligible organization or a licensed distributor.
3. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and distribution of ~~the net proceeds of games of chance.~~
4. The ~~gaming site~~ where any game of chance is being held, operated, or conducted, or where it is intended that the game will be held, must be open to inspection by the attorney general and by local law enforcement officials of this state.
5. ~~When any~~ The value of a merchandise prize is awarded in a game of chance; its value is its current retail price.
6. Equipment, prizes, and supplies for games of chance may not be purchased or sold at excessive prices in excess of the usual price thereof.
7. A class A organization ~~must shall~~ devote the entire net proceeds derived from ~~conducting games of chance~~ within three months from the end of the quarter in which ~~such the net~~ proceeds were earned to eligible uses. A class A organization desiring to hold the net proceeds for a period longer than three months shall apply to the attorney general for special permission, and upon good for reasonable cause shown, the attorney general may grant the request.
8. ~~No person who has pled guilty to or been found guilty of a felony may sell or distribute equipment; or conduct or assist in games of chance under this chapter for five years from the date of the conviction or release from incarceration, parole, or probation; whichever is the latter. No person determined by the attorney general to have participated in organized crime or unlawful gambling; may be permitted to sell or distribute equipment; or conduct or assist in games of chance under this chapter for a period determined by the attorney general.~~
9. Any person involved with the conduct of games of chance must be: A person is restricted from being involved in gaming and the attorney general shall conduct criminal history background checks as follows:
  - a. A person of good character, honesty, and integrity. A person who has pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government, or has pled guilty to or been found guilty of a violation of this chapter, chapters 12.1-28 or 53-06.2, or offenses of other states or the federal government equivalent to offenses defined in these chapters may not be a licensed distributor, may not be employed by a licensed



distributor to sell or distribute gaming equipment, and may not be employed by a licensed organization to conduct games on a site for five years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.

- b. A person whose prior activities, criminal record, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming. A person who has pled guilty to or been found guilty of a misdemeanor offense in violation of section 6-08-16.1 or chapters 12.1-06, 12.1-23, or 12.1-24 or offenses of other states, the federal government, or a municipality equivalent to these offenses may not be a licensed distributor, may not be employed by a licensed distributor to sell or distribute gaming equipment, and may not be employed by a licensed organization to conduct games on a site for two years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.

- c. The attorney general shall conduct a criminal history background check of each potential employee and charge a fee of twenty dollars per record check in accord with section 12-60-16.9. In addition, the attorney general may require payment of any additional fee necessary to defray the actual cost of a background check of a person for whom adequate background information sources are not readily available, including a person who has not resided in North Dakota for the previous one year. The attorney general may require payment of the estimated additional fee in advance as a condition precedent to beginning the background check. The attorney general shall notify the person when a determination is made that an additional fee is necessary and shall notify the person of the best estimate of the amount of the additional fee. In lieu of paying the additional cost, a person may cancel the background check. The estimated cost must be placed in the attorney general's refund fund for use to defray the actual expenses of the background check. The remainder of the funds must be returned to the person within thirty days of the conclusion of the background check. The attorney general shall notify the organization and or the person of the result of the background check. The attorney general shall hold the information confidential except in the proper administration of this chapter or any gaming rule, or to an authorized law enforcement agency.

- ~~10.~~ 9. The attorney general or commission may prohibit a person from playing games of chance if the person violates this chapter, chapters 12.1-28 or 53-06.2, or any a gaming rule adopted under this chapter.
- ~~11.~~ 10. The attorney general or commission may require a licensed organization to pay a bingo or raffle prize to a player based on a factual determination; after opportunity for the parties to be heard, or a hearing by the attorney general or commission.
- ~~12.~~ 11. If bingo is the primary game of chance conducted at an authorized a site, no a licensed organization may not pay bingo prizes in which the

aggregate of the bingo prizes for a quarter exceeds the total bingo gross proceeds for the quarter at that site. However, a bingo prize that equals or exceeds ten thousand dollars is excluded from the computation of the aggregate of the bingo prizes.

**SECTION 10. AMENDMENT.** Section 53-06.1-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-06.1. Work Local work permits.**

- 1- Cities; for sites within city limits; and counties; for sites outside city limits; may require a person associated with the conduct of conducting games of chance to obtain a local work permit, charge a fee for issuance of a work permit, and conduct reasonable inquiries into the background of the individual. Any A fee charged for issuance of a work permit may not exceed the actual expense to the city or county of licensing processing the applicant application. The attorney general may adopt guidelines relating to issuance of work permits by counties and cities.
- 2- The attorney general may establish a centralized statewide work permit system to determine the identity, prior activities, and present employment of all gaming employees in this state. The information must be held confidential except in the proper administration of this chapter or any rule adopted under this chapter, or to an authorized law enforcement agency. No gaming organization may employ any person or a gaming employee nor may any person be employed as a gaming employee unless that person possesses a current and valid work permit. The attorney general may issue, renew, deny, suspend, and revoke work permits. Subject to the attorney general's discretion, a temporary work permit may be issued. If an application is denied or a work permit is suspended or revoked, the notice by the attorney general must include a statement of the facts upon which the attorney general relied in making the decision. Any person whose application for a work permit has been denied may, not later than twenty days following receipt of the notice, apply to the attorney general for a hearing. The attorney general may prescribe the frequency of the work permit renewals. The attorney general may issue an emergency order, effective upon service to the permitholder, suspending a person's work permit upon a determination that the suspension is necessary to preserve effective regulation and control of gaming, to preserve the public interest or morals, or the person obtained a work permit by misrepresentation. The attorney general may charge each gaming employee an annual work permit fee of twenty-five dollars and a fee of five dollars for each change of employment. In addition to the basic permit fees, the attorney general may require payment of any additional fees necessary to defray the actual costs of a background investigation of applicants for whom adequate background information sources are not readily available, including applicants who have not resided in the state for at least one year. The attorney general may require payment of the estimated additional fee in advance as a condition precedent to beginning the investigation. The attorney general shall notify the applicant as soon as possible after a determination is made that the additional fee is necessary and shall also notify the applicant of the attorney general's best estimate of the amount of the additional license fee. In lieu of paying the additional cost, any applicant may withdraw the application. The

~~estimated cost must be placed into the attorney general's refund fund for use to defray the actual expenses of the background investigation. The remainder of such funds must be returned to the applicant within thirty days of the conclusion of the investigation.~~

**SECTION 11. AMENDMENT.** Section 53-06.1-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-07. Games of chance allowed.**

1. Only an eligible organization licensed by the attorney general may conduct bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools. These games may only be conducted and played at gaming sites a site authorized by a local governing body and approved by the attorney general.
2. The game of pull tabs may be conducted only through use of commingled games.

**SECTION 12. AMENDMENT.** Section 53-06.1-07.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-07.1. Limitations on hours and participation in games of chance.** A person under twenty-one years of age may not directly or indirectly play ~~games of~~ pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. A person under eighteen years of age may not directly or indirectly play ~~the game of~~ bingo unless the person is accompanied by an adult, ~~the bingo game is conducted by an organization that has been issued a local permit, or the game's prize structure does not exceed that allowed under subsection 1 of section 53-06.1-03 for a local permits permit.~~ The games Games of pull tabs, punchboards, twenty-one, paddlewheels, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state ~~or the~~, county, or city.

**SECTION 13. AMENDMENT.** Section 53-06.1-07.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-07.2. Draw poker and stud poker - Limited authorization Poker.** A licensed organization may conduct ~~the game of draw~~ poker on not more than two occasions per year as follows:

1. The organization may supply the dealer.
2. The maximum single bet is one dollar.
3. Not more than three raises, of not more than one dollar each, may be made among all the players in each round of bets. Otherwise the normal rules of ~~draw poker and stud poker~~ apply.
4. The organization shall assess each player a fee not to exceed two dollars per ~~half one-half~~ hour of playing time ~~by that person~~, collected in advance. A fee may be charged each player for entry into a tournament for prizes which fee may be in lieu of or in addition to the fee assessable at one-half hour intervals.

**SECTION 14. AMENDMENT.** Section 53-06.1-07.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-07.3. Calcuttas.** A licensed organization may conduct a calcutta for professional or amateur sporting events held in this state, but not for elementary, secondary, or postsecondary education sports events. The organization shall post at the ~~gaming~~ site all rules affecting the conduct and play of calcuttas. The organization may not have an interest in the outcome of the calcutta. A player must place a wager in the calcutta auction pool at the ~~authorized~~ site. No more than one wager per competitor may be allowed in any calcutta pool. The amounts paid to calcutta pool players in prizes may not exceed ninety percent of the gross proceeds. ~~No~~ A competitor in a calcutta pool may not be under eighteen years of age.

**SECTION 15. AMENDMENT.** Section 53-06.1-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-08. Punchboards and pull tabs - Sale of chances - Maximum price per pull tab.** Unless all of the top tier winning pull tabs or punchboard punches have been redeemed, or unless otherwise permitted by the attorney general, ~~no~~ a person or organization conducting ~~games~~ of pull tabs or punchboards may not close the game once after the contents of that game have been offered for sale to players placed in play. The maximum sales price per pull tab and punchboard punch ~~may not exceed~~ is two dollars. The maximum prize value of the top tier winning pull tab is five hundred dollars.

**SECTION 16. AMENDMENT.** Section 53-06.1-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-09. Sports pools - Control - Rules posted - Limitation on prizes.** A licensed organization or organization that has ~~been issued~~ a local permit may conduct a sports pools pool for professional sports only. ~~The licensed organization or organization that has been issued a local permit shall clearly post any rules affecting the conduct of sports pools or requirements of players.~~ The maximum wager on ~~any~~ a sports pool is five dollars. ~~The amounts paid to sports pool players in amount of prizes may not exceed ninety percent of the gross proceeds.~~

**SECTION 17. AMENDMENT.** Section 53-06.1-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-10. Twenty-one - Sale of chips - Redemption - Wager - Limit - Rules of play - Tips.** A licensed organization may conduct and shall control the playing of the game twenty-one on its ~~authorized~~ site. No money may be allowed on the table as a wager. The organization shall provide playing chips of various denominations to players. Chips must be redeemed by the ~~licensee~~ organization for their full value. The maximum limit per wager may be set by the organization at not more than five dollars and wagers in increments of one dollar must be accepted up to the maximum limit. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on any hand. ~~Twenty-one is a card game played by a maximum of seven players and one dealer. The dealer must be a representative of the organization sponsoring the game of chance.~~ Each player plays the player's hand against the dealer's hand. In order to remain in the hand being dealt, neither the player nor the dealer may play a hand with a count greater than twenty-one. A count of twenty-one obtained with two cards is termed a natural twenty-one and is an automatic payout except in case of a tie count with the dealer. Players may double down on a natural twenty-one. ~~In the case of matching or For~~

a tie count between the player and the dealer, no winner is declared and the player keeps the player's wager. ~~A licensee~~ An organization may allow the pooling of tips received by dealers at ~~an authorized~~ a site. Any requirement to pool tips is within the sole discretion of each ~~licensee~~ organization and may not be imposed or encouraged by the attorney general or commission. ~~Each licensee~~ An organization conducting twenty-one shall ~~conspicuously~~ post rules relating to the conduct of the game in a conspicuous location near where the game is played. ~~After December 31, 1993, except~~ Except for an organization's ~~authorized~~ site that has twenty-one gross proceeds averaging less than ten thousand dollars per quarter, no organization may conduct twenty-one at an authorized site with wagers exceeding two dollars unless the organization has first installed video surveillance equipment as required by rules ~~adopted by the commission~~ and the equipment is approved by the attorney general. ~~The commission may delay the requirements for surveillance required by this section for good cause shown if the commission specifically finds that the delay would allow the installation of video surveillance equipment of superior technological capability and enhanced enforcement value. In no event may the delay extend beyond July 1, 1994.~~

**SECTION 18. AMENDMENT.** Section 53-06.1-10.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-10.1. Raffles - ~~Limitation~~ - Prizes.** Prizes for ~~raffles~~ a raffle may include any property which may be legally owned and possessed, but may not include real estate. Cash prizes may be awarded in ~~raffles~~ a raffle provided the value of no single cash prize exceeds one thousand dollars and provided that total cash prizes do not exceed three thousand dollars in one day.

<sup>234</sup> **SECTION 19. AMENDMENT.** Section 53-06.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-11. ~~Statement of receipts~~ Gross proceeds - Expenses.**

1. All moneys collected or received from games of ~~chance and admissions thereto~~, except cash prizes of one hundred dollars or less paid immediately, must be deposited in a special account of the licensed organization ~~which contains only that money~~. Cash prizes of an amount to be determined by the attorney general and purchase prices of merchandise prizes must be withdrawn from ~~such~~ this account by consecutively numbered checks duly signed by a specified officer or officers of the organization and payable to a specific person or organization. There must also be written on the check the nature of the prize for ~~which the check is drawn~~. No check may be drawn to "cash" or a fictitious payee. ~~In the case of~~ If a cash prize of ~~more than exceeds~~ one hundred dollars, the prize may also be issued by an accountable receipt or nonnegotiable instrument approved by the attorney general.
2. No part of ~~the~~ net proceeds after they have been devoted to an eligible use recipient may be used by the donee to pay any person for services

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<sup>234</sup> Section 53-06.1-11 was also amended by section 1 of House Bill No. 1052, chapter 486, and section 3 of House Bill No. 1355, chapter 485.

rendered or materials purchased in connection with the conduct of games of ~~chance~~ by the donor organization.

3. Subject to the limitations of this subsection, expenses incurred for games of ~~chance~~ may be deducted from adjusted gross proceeds, to the extent that total expenses for games of ~~chance~~ do not exceed fifty percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. However, for an authorized site at which the game pull tabs is the only game of ~~chance~~ conducted and the conduct of pull tabs is through an electronic-mechanical dispensing device, expenses incurred for this game of ~~chance~~ may be deducted from adjusted gross proceeds, based on the average adjusted gross proceeds of all of an organization's authorized sites at which the game of pull tabs is conducted through electronic-mechanical dispensing devices, according to the following:
  - a. On average adjusted gross proceeds not exceeding eight thousand dollars per quarter, an expense limitation of fifty percent.
  - b. On average adjusted gross proceeds exceeding eight thousand dollars per quarter, but not exceeding twelve thousand dollars per quarter, an expense limitation of forty-five percent.
  - c. On average adjusted gross proceeds exceeding twelve thousand dollars per quarter, but not exceeding sixteen thousand dollars per quarter, an expense limitation of forty percent.
  - d. On average adjusted gross proceeds exceeding sixteen thousand dollars per quarter, an expense limitation of thirty-five percent.

Cash shorts incurred in games of ~~chance~~ are classified as expenses toward the expense limitation. Notwithstanding the limitations of this subsection, in addition to the expenses allowed to be deducted from adjusted gross proceeds, a licensed organization may deduct as an expense capital expenditures for security or video surveillance equipment used for controlling games of ~~chance~~ if the equipment is required by section 53-06.1-10 or gaming rules adopted by the commission and the equipment is approved by the attorney general. ~~The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes.~~ This subsection does not authorize violations of the rent limitations ~~contained in this chapter.~~

**SECTION 20. AMENDMENT.** Section 53-06.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-11.1. Eligible organizations not to use any money in certain political activities - Penalty.** An eligible organization that derives any revenue from games of ~~chance~~ it conducts ~~under this chapter~~ may not use money from any source for the placing on the ballot of any initiated or referred measure or for any activities consisting of attempts to participate in any political campaign on behalf of or in opposition to any active official or person who is or has been a candidate for public office. Any funds expended by an eligible organization to promote or oppose an initiated or referred measure that has been placed on the ballot or for any activities that qualify as activities of a lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a lobbyist, and that are not otherwise required to

be reported under section 54-05.1-03 must be reported to the attorney general ~~in the manner and at the times as~~ prescribed by the attorney general. An eligible organization that violates this section is subject to a suspension of its license to conduct games of chance ~~under this chapter~~ for up to one year.

**SECTION 21. AMENDMENT.** Section 53-06.1-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-12. Tax based on adjusted gross proceeds Gaming tax.** A tax as provided in this section upon the total adjusted gross proceeds received by a licensed organization must be paid to the attorney general on a quarterly basis upon tax return forms as prescribed by the attorney general. ~~The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for expenses.~~ The amount of this tax must be paid from adjusted gross proceeds and may not be charged against the percentage limitation of expenses. The tax is hereby imposed upon every licensed organization, to be levied, collected, and paid quarterly ~~with respect to the adjusted gross proceeds of the organization as provided in this section,~~ computed at the following rates:

1. On adjusted gross proceeds not in excess of two hundred thousand dollars per quarter, a tax of five percent.
2. On adjusted gross proceeds in excess of two hundred thousand dollars per quarter but not in excess of four hundred thousand dollars per quarter, a tax of ten percent.
3. On adjusted gross proceeds in excess of four hundred thousand dollars per quarter but not in excess of six hundred thousand dollars per quarter, a tax of fifteen percent.
4. On adjusted gross proceeds in excess of six hundred thousand dollars per quarter, a tax of twenty percent.

**SECTION 22. AMENDMENT.** Section 53-06.1-12.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-12.1. Games of chance tax Deposits.** The state treasurer shall deposit ~~all gaming and excise taxes, monetary fines, and interest and penalties collected under this chapter~~ in the general fund in the state treasury.

**SECTION 23. AMENDMENT.** Section 53-06.1-12.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-12.2. Pull tabs ~~tab~~ excise tax in lieu of sales and use taxes.** In addition to any other tax provided by law and in lieu of sales or use taxes, there is imposed a tax of four and one-half percent on the gross proceeds from the sale at retail of pull tabs to a final user. Gross proceeds and a sale at retail for purposes of this section include pull tabs sold and pull tabs provided a player in exchange for redeemed winning pull tabs. The tax imposed by this section must be paid to the attorney general at the time tax returns ~~or reports~~ are filed ~~and taxes paid by the licensed organization under section 53-06.1-12.~~

**SECTION 24.** A new section to chapter 53-06.1 of the North Dakota Century Code is created and enacted as follows:

Interest and penalty. Notwithstanding any other provision of this chapter, the attorney general shall assess a licensed organization interest and penalty as follows:

1. Assessment of interest.
  - a. An organization that requests and is granted an extension of time for filing a tax return shall pay, with the tax, interest on the tax at the rate of twelve percent per annum from the original due date of the tax return through the date the tax is paid.
  - b. If additional tax is due based on an audit or a mathematical verification of a tax return, an organization shall pay interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the tax return to the date paid.
2. Assessment of penalty.
  - a. If an organization, without intent to evade any tax imposed by this chapter, fails to pay the tax due on a tax return, filed on or before the due date or extended due date, the organization shall pay a penalty of five percent of the tax due, or twenty-five dollars, whichever is greater.
  - b. If an organization, without intent to evade any tax imposed by this chapter, fails to file a tax return on or before the due date or extended due date, the organization shall pay a penalty of five percent of the tax due, or twenty-five dollars, whichever is greater, if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate.
  - c. If additional tax is due based on an audit or mathematical verification of a tax return, an organization shall pay a penalty as prescribed in subdivision a or b.
3. If an organization fails to pay any tax, interest, or penalty imposed by this chapter, the attorney general shall bring court action to collect the tax, interest, and penalty.
4. The attorney general may for good cause shown waive all or any part of any interest or penalty that was assessed pursuant to this section.
5. If an organization that has failed to file a tax return and has been notified by the attorney general of the delinquency refuses or neglects within thirty days after the notice to file a proper return, the attorney general shall determine the adjusted gross proceeds of the organization according to the best information available, and shall assess the tax at not more than double the amount so determined. The appropriate interest and penalty also apply.
6. Interest and penalty are classified as expenses toward the expense limitation of subsection 3 of section 53-06.1-11.



**SECTION 25. AMENDMENT.** Section 53-06.1-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-13. Examination of books and records.** The attorney general and representatives of the governing body of a city or county with respect to a licensed organization or organization that has ~~been issued a local permit by that governing body~~ may examine or cause to be examined the books and records of ~~any licensed the organization or organization that has been issued a local permit to conduct games of chance under this chapter~~ to the extent that such books and records may directly or indirectly relate to any transaction connected with holding, operating, or conducting any game of chance.

**SECTION 26. AMENDMENT.** Section 53-06.1-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-14. Distributors and manufacturers - Licensure.**

1. A manufacturer of pull tabs, manufacturer of ~~paper~~ bingo cards, manufacturer of ~~electronic-mechanical~~ pull tab dispensing devices, manufacturer's distributor of ~~electronic-mechanical~~ pull tab dispensing devices, and distributor shall apply annually for a license upon a form prescribed by the attorney general before the first day of April in each year and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general may require. The license fee for a distributor is one thousand five hundred dollars. The license fee for a manufacturer's distributor is five hundred dollars. The license fee for a manufacturer of ~~electronic-mechanical~~ pull tab dispensing devices, manufacturer of pull tabs, ~~paper~~ bingo cards, or both a manufacturer of pull tabs and ~~paper~~ bingo cards, is two thousand dollars.
2. ~~No~~ A distributor may ~~not~~ sell, market, or otherwise distribute raffle tickets or equipment for games of ~~chance~~ except to other licensed distributors, licensed manufacturers' distributors, licensed organizations, organizations that have ~~been issued a local permit, gaming schools, or~~ other persons authorized by the attorney general. A manufacturer of pull tabs or ~~paper~~ bingo cards may not sell, market, or otherwise distribute pull tabs or ~~paper~~ bingo cards, other than to a licensed distributor. A distributor of pull tabs or ~~paper~~ bingo cards must purchase or otherwise receive pull tabs or ~~paper~~ bingo cards only from a licensed manufacturer or licensed distributor. A manufacturer of ~~electronic-mechanical~~ pull tab dispensing devices may not sell, market, or otherwise distribute pull tab dispensing devices other than to a licensed distributor or a licensed manufacturer's distributor. A licensed distributor and licensed manufacturer's distributor of ~~electronic-mechanical~~ pull tab dispensing devices may purchase or otherwise receive pull tab dispensing devices only from a licensed manufacturer, licensed manufacturer's distributor, or licensed distributor.
3. ~~Every~~ An eligible organization shall acquire all raffle tickets or ~~gaming equipment for games of chance~~ from a licensed distributor licensed under this chapter, unless the raffle tickets or ~~gaming equipment for games of chance~~ are is printed, manufactured, or constructed by the eligible organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. No ~~game deal~~ of pull tabs, ~~punchboards~~ punchboard,

sports pool ~~boards~~ board, calcutta ~~boards~~ board, deal of bingo cards used in a dispensing device, or a series of paddlewheel ticket cards may be sold without a North Dakota gaming stamp being affixed to them. ~~North Dakota~~ A licensed ~~distributors~~ distributor shall purchase ~~the~~ North Dakota gaming stamps from the attorney ~~general's office~~ general and the cost for each stamp may not exceed twenty-five cents.

4. ~~No~~ A licensed organization or organization that has ~~been issued~~ a local permit may not be a distributor. ~~No~~ A North Dakota wholesaler of liquor or alcoholic beverages may not be a ~~North Dakota~~ distributor. ~~No~~ North Dakota A licensed manufacturer may not be a ~~North Dakota~~ distributor or have any financial interest in a ~~North Dakota~~ distributor. ~~No~~ North Dakota A distributor may not have any financial interest in a ~~North Dakota~~ licensed manufacturer.
5. The attorney general may, based on reasonable grounds or on written complaint, suspend or revoke an organization's local permit or an organization's, distributor's, manufacturer's distributor, or manufacturer's license for violation, by the organization, distributor, manufacturer's distributor, or manufacturer or any officer, director, agent, member, or employee of the organization, distributor, manufacturer's distributor, or manufacturer, of this chapter or any gaming rule adopted under this chapter.
6. In addition to the basic license fee, the attorney general may require payment of any additional fee necessary to defray the actual ~~costs~~ cost of a background investigation of ~~applicants~~ an applicant. The attorney general may require payment of the estimated additional fee in advance ~~as a condition precedent to beginning the investigation~~. The attorney general shall notify the an applicant ~~as soon as possible after a determination is made~~ when it is determined that the an additional fee is necessary and ~~shall also notify the applicant of the attorney general's best estimate of the amount of the additional license fee~~. ~~Any~~ An applicant may ~~then~~ withdraw the application ~~in lieu of paying rather than pay~~ the additional ~~cost~~ fee. The estimated ~~cost~~ fee must be placed into the attorney general's refund fund for use to defray the actual expenses ~~of the background investigation~~. The remainder of the funds must be returned to the applicant within thirty days of ~~the conclusion of concluding~~ the investigation.

SECTION 27. AMENDMENT. Section 53-06.1-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-15. Form and display of license and local permit. ~~Each~~ A license and local permit must contain the name and address of the ~~licensed organization or organization that has been issued a local permit and such other information as prescribed by the attorney general or local governing body may require~~.

~~Each~~ Except for the sale of a raffle ticket, a license and site authorization or local permit must be conspicuously displayed at the gaming site when any a game of chance is conducted and for at least thirty minutes thereafter. The sale of a raffle ticket does not require the display of the license or local permit.

SECTION 28. AMENDMENT. Section 53-06.1-15.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-15.1. Powers and duties of the attorney general.** The attorney general may:

1. Inspect and examine all premises in which gaming is conducted or gaming ~~devices or equipment are~~ is manufactured, sold, or distributed. The attorney general may require a licensed manufacturer to reimburse the attorney general for the reasonable actual cost of transportation, lodging, meals, and incidental expenses incurred in inspecting the manufacturer's facility.
2. Inspect all equipment and supplies in, upon, or about ~~such~~ the premises.
3. Seize and remove from such premises and impound any gaming ~~related~~ equipment, supplies, games of ~~chance~~, or books and records for the purpose of examination and inspection. When books or records are seized, the attorney general shall provide copies of those records or books within ~~twenty-four~~ seventy-two hours of a specific request by the organization for a copy of the books or records seized.
4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, ~~licensees~~ organizations, lessors, manufacturers, manufacturer's distributors, and distributors, including any affiliated companies on their premises ~~and in the presence of the applicants; licensees; lessors; manufacturers; distributors; or agents~~ concerning any income or expense resulting from any gaming ~~business~~ activity, determine compliance with this chapter or any gaming rule, and require verification of income ~~or~~, expense, or ~~devotion of net proceeds~~, and all other matters affecting ~~the enforcement of the policy and provisions~~ of this chapter.
5. ~~Audit and inspect any other books and records of eligible organizations conducting games of chance for the purpose of determining compliance with applicable statutes, rules, and constitutional provisions regarding devotion of net proceeds from games of chance.~~
6. Enter into a reciprocal agreement with the commissioner of the internal revenue service of the United States for exchange of information for state tax administration purposes.

**SECTION 29. AMENDMENT.** Section 53-06.1-15.2 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-15.2. Attorney general may bring civil action for collection of fees and tax and to force compliance.**

1. At any time within three years after any amount of fees or tax required to be paid pursuant to this chapter becomes due, the attorney general may bring a civil action to collect the amount due. However, if for any reason there is a change in adjusted gross income or tax liability by an amount that is in excess of twenty-five percent of the amount of adjusted gross income or tax liability stated on the tax return as filed, any additional tax determined to be due may be assessed any time within six years after the due date of the tax return, or six years after the tax return was filed, whichever period expires later. An action may be brought even though the person owing the fees or tax is not presently a gaming licensee ~~under this chapter.~~

2. The attorney general may institute an action in any district court for declaratory injunctive relief against a person, whether or not the person is a gaming licensee as the attorney general deems necessary to prevent noncompliance with this chapter and the gaming rules adopted pursuant to this chapter.

**SECTION 30. AMENDMENT.** Section 53-06.1-15.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-15.4. Conditional license - Issuance.** The attorney general, upon application and at the attorney general's discretion, may issue a conditional license to conduct games of chance to an eligible organization whose regularly issued license has been suspended or revoked for a violation of this chapter or gaming rules adopted under this chapter or whose regularly issued license has been relinquished. The attorney general shall designate the time period for which the conditional license is valid and may impose any conditions for issuance of the license ~~as the attorney general determines necessary~~. ~~Section 53-06.1-16.2 does not apply to an eligible organization to whom a conditional license is issued pursuant to this section.~~

**SECTION 31. AMENDMENT.** Section 53-06.1-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-16. Violation of chapter or rule - Misdemeanor - Forfeiture of licensure - Ineligibility.** Any Except as otherwise provided by this chapter, a person who knowingly makes a false statement in any application for a local permit, license, or authorizing resolution or in any statement annexed thereto, or who fails to keep sufficient books and records to substantiate the gross proceeds, prizes, expenses, or devotion of net proceeds ~~resulting from games of chance conducted under this chapter~~, or who falsifies any books or records ~~so far as they relate relating to~~ any transaction connected with the holding, operating, and conducting of any game of chance games, or who violates this chapter, any gaming rule adopted under this chapter, or of any term of a local permit or license is guilty of a class A misdemeanor. If convicted, the person forfeits any license or local permit issued to it pursuant to this chapter and is ineligible to reapply for a license or local permit for a period of time determined by the attorney general ~~or commission~~. Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02 may not have that license suspended, revoked, or denied in consequence of action taken under this section.

**SECTION 32. AMENDMENT.** Section 53-06.1-16.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-16.1. Bogus chips, marked cards, cheating devices, or fraudulent schemes unlawful - Penalty.** It is unlawful for any person playing or conducting any authorized game of chance conducted by ~~a licensed~~ an eligible organization:

1. To use bogus or counterfeit chips or pull tabs, or to substitute or use any game, cards, pull tabs, or game piece that have been marked or tampered with.
2. To employ or have on one's person any cheating device to facilitate cheating in any game of chance, or to attempt to commit or commit a theft, or to assist in committing any other fraudulent scheme.

3. To willfully use any fraudulent scheme or technique, including when an operator or player of games of pull tabs directly or indirectly solicits, provides, or receives inside information of the status of a game for the benefit of either person.
4. To alter or counterfeit a site authorization, gaming license, or North Dakota gaming stamp.
5. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate this chapter or any gaming rule adopted under this chapter.

A person violating this section is guilty of a class A misdemeanor unless the amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony. However, if a person uses a fraudulent scheme regarding soliciting, providing, or receiving inside information involving the game of pull tabs or uses a fraudulent scheme or technique to cheat or skim involving the games of pull tabs, twenty-one, or bingo, regardless of the amount gained, then the offense is a class C felony.

**SECTION 33. AMENDMENT.** Section 53-06.1-16.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-16.2. License suspension or revocation by attorney general or commission - Ineligibility for local permit.** A licensed organization that has its license suspended or revoked by the attorney general ~~or commission~~ or ~~a licensed organization~~ that has not devoted its net proceeds is ineligible for a local permit to conduct raffles, sports pools, or bingo during the period of suspension or revocation.

**SECTION 34. AMENDMENT.** Section 53-06.1-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-17. Rules.** The commission shall adopt rules in accordance with chapter 28-32, ~~relating to, but not limited to, to include~~ methods of play, conduct, and promotion of games of ~~chance~~; methods, procedures, and minimum standards for ~~accounting and~~ recordkeeping; requiring reports by licensed organizations; methods of competition and doing business by distributors, manufacturers, and manufacturers' distributors; marking or identification of raffle tickets, pull tabs, bingo equipment, pull tab receptacles, punchboards, or any other ~~implements of gambling gaming equipment~~ used or distributed in this state ~~to implement or effectuate the provisions and purpose of this chapter~~; quality standards for the manufacture of pull tabs and bingo cards, pull tab and bingo card dispensing devices, and paper bingo cards; to ensure that ~~the entire~~ net proceeds of ~~games of chance~~ are devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses ~~as defined by this chapter~~; to protect and promote the public interest; to ensure fair and honest games of ~~chance~~; to ensure that fees and taxes are paid; to impose monetary fines and establish appeal procedures; to establish guidelines for work permits issued by counties and cities; and to ~~seek to prevent or~~ and detect unlawful gambling activity.

**SECTION 35. REPEAL.** Section 53-06.1-04 of the North Dakota Century Code and sections 53-06.1-02.1, 53-06.1-05, and 53-06.1-08.1 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved April 11, 1995

Filed April 12, 1995

## CHAPTER 485

## HOUSE BILL NO. 1355

(Representatives Payne, Kretschmar)  
(Senators W. Stenehjem, Wogtsland)

## GAMING SITE EMPLOYEE ASSISTANCE TO GAMING ORGANIZATIONS

AN ACT to amend and reenact subsection 3 of section 53-06.1-03, section 53-06.1-06, and subsection 3 of section 53-06.1-11 of the North Dakota Century Code, relating to licensure of eligible organizations and allowable expenses for games of chance.

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

<sup>235</sup> SECTION 1. AMENDMENT. Subsection 3 of section 53-06.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The attorney general shall license eligible organizations that conform to the requirements of this chapter ~~by issuing licenses as follows:~~
  - a. ~~A class A license to an eligible organization that is a fraternal, veterans, or civic and service organization.~~
  - b. ~~A class B license to an eligible organization that is a charitable, religious, educational, public spirited, or public safety organization. The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license. An eligible organization that qualifies for a class A license may not also be issued a class B license.~~
  - e. ~~The commission may establish by rule no more than two additional classes of licenses based on the frequency of gaming, the types of games of chance conducted by the licensed organization, and the adjusted gross proceeds collected or expected to be collected by the licensed organization.~~

<sup>236</sup> SECTION 2. AMENDMENT. Section 53-06.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-06. Persons permitted to conduct games of chance - Gaming site  
- Equipment - Compensation.

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<sup>235</sup> Section 53-06.1-03 was also amended by section 4 of House Bill No. 1168, chapter 484.

<sup>236</sup> Section 53-06.1-06 was also amended by section 9 of House Bill No. 1168, chapter 484.

1. No person, except a member or employee of a licensed organization or an organization that has been issued a local permit or a member of an organization auxiliary to a licensed organization or an organization that has been issued a local permit, may assist in the holding, operating, or conducting of any game of chance under this chapter. In the conduct of pull tabs through an electronic-mechanical dispensing device, the attorney general may allow employees of licensed alcoholic beverage establishments to provide limited assistance to ~~a class B licensed organization whose adjusted gross proceeds does not exceed eighty thousand dollars per quarterly reporting period of operation or to any class A licensed organization organizations.~~ However, a volunteer of an eligible organization may sell raffle tickets.
  2. Except when authorized by the attorney general, no games of chance may be conducted with any gaming equipment other than gaming equipment owned by an eligible organization or rented at a reasonable rate by an eligible organization from a licensed distributor.
  3. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and distribution of the net proceeds of games of chance.
  4. The gaming site where any game of chance is being held, operated, or conducted, or where it is intended that the game will be held, must be open to inspection by the attorney general and by law enforcement officials of this state.
  5. When any merchandise prize is awarded in a game of chance, its value is its current retail price.
  6. Equipment, prizes, and supplies for games of chance may not be purchased or sold at prices in excess of the usual price thereof.
  7. ~~A class A organization must devote the entire net proceeds derived from conducting games of chance within three months from the end of the quarter in which such proceeds were earned to eligible uses. A class A organization desiring to hold the net proceeds for a period longer than three months shall apply to the attorney general for special permission; and upon good cause shown, the attorney general may grant the request.~~
  8. No person who has pled guilty to or been found guilty of a felony may sell or distribute equipment, or conduct or assist in games of chance under this chapter for five years from the date of the conviction or release from incarceration, parole, or probation, whichever is the latter. No person determined by the attorney general to have participated in organized crime or unlawful gambling, may be permitted to sell or distribute equipment, or conduct or assist in games of chance under this chapter for a period determined by the attorney general.
- 9- 8. Any person involved with the conduct of games of chance must be:
- a. A person of good character, honesty, and integrity.
  - b. A person whose prior activities, criminal record, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create



or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming.

- ~~10~~ 9. The attorney general or commission may prohibit a person from playing games of chance if the person violates this chapter or any rule adopted under this chapter.
- ~~11~~ 10. The attorney general or commission may require a licensed organization to pay a bingo or raffle prize to a player based on a factual determination, after opportunity for the parties to be heard, by the attorney general or commission.
- ~~12~~ 11. If bingo is the primary game of chance conducted at an authorized site, no licensed organization may pay bingo prizes in which the aggregate of the bingo prizes for a quarter exceeds the total bingo gross proceeds for the quarter at that site. However, a bingo prize that equals or exceeds ten thousand dollars is excluded from the computation of the aggregate of the bingo prizes.
12. An organization shall disburse net proceeds within the period prescribed by rule.

<sup>237</sup> **SECTION 3. AMENDMENT.** Subsection 3 of section 53-06.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Subject to the limitations of this subsection, expenses incurred for games of chance may be deducted from adjusted gross proceeds, to the extent that total expenses for games of chance do not exceed fifty percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. ~~However, for an authorized site at which the game pull tabs is the only game of chance conducted and the conduct of pull tabs is through an electronic-mechanical dispensing device, expenses incurred for this game of chance may be deducted from adjusted gross proceeds, based on the average adjusted gross proceeds of all of an organization's authorized sites at which the game of pull tabs is conducted through electronic-mechanical dispensing devices, according to the following:~~
- a. ~~On average adjusted gross proceeds not exceeding eight thousand dollars per quarter; an expense limitation of fifty percent;~~
- b. ~~On average adjusted gross proceeds exceeding eight thousand dollars per quarter, but not exceeding twelve thousand dollars per quarter; an expense limitation of forty-five percent.~~

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<sup>237</sup> Section 53-06.1-11 was also amended by section 1 of House Bill No. 1052, chapter 486, and section 19 of House Bill No. 1168, chapter 484.

- c. On average adjusted gross proceeds exceeding twelve thousand dollars per quarter, but not exceeding sixteen thousand dollars per quarter, an expense limitation of forty percent.
- d. On average adjusted gross proceeds exceeding sixteen thousand dollars per quarter, an expense limitation of thirty-five percent.

Cash shorts incurred in games of chance are classified as expenses toward the expense limitation. Notwithstanding the limitations of this subsection, in addition to the expenses allowed to be deducted from adjusted gross proceeds, a licensed organization may deduct as an expense capital expenditures for security or video surveillance equipment used for controlling games of chance if the equipment is required by section 53-06.1-10 or rules adopted by the commission and the equipment is approved by the attorney general. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes. This subsection does not authorize violations of the rent limitations contained in this chapter.

Approved April 4, 1995

Filed April 4, 1995

**CHAPTER 486****HOUSE BILL NO. 1052**

(Legislative Council)

(Interim Judiciary Committee)

(Representatives Brown, Coats, Kretschmar)

**PULL TABS EXPENSE DEDUCTION**

AN ACT to amend and reenact section 53-06.1-11 of the North Dakota Century Code, relating to the expense limitation for games of chance.

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

<sup>238</sup> **SECTION 1. AMENDMENT.** Section 53-06.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-11. Statement of receipts - Expenses.**

1. All moneys collected or received from games of chance and admissions thereto, except cash prizes of one hundred dollars or less paid immediately, must be deposited in a special account of the licensed organization which contains only that money. Cash prizes of an amount to be determined by the attorney general and purchase prices of merchandise prizes must be withdrawn from such account by consecutively numbered checks duly signed by a specified officer or officers of the organization and payable to a specific person or organization. There must also be written on the check the nature of the prize for which the check is drawn. No check may be drawn to "cash" or a fictitious payee. In the case of a cash prize of more than one hundred dollars, the prize may also be issued by an accountable receipt or nonnegotiable instrument approved by the attorney general.
2. No part of the net proceeds after they have been devoted to an eligible use recipient may be used by the donee to pay any person for services rendered or materials purchased in connection with the conduct of games of chance by the donor organization.
3. Subject to the limitations of this subsection, expenses incurred for games of chance may be deducted from adjusted gross proceeds, to the extent that total expenses for games of chance do not exceed fifty percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. However, for an authorized site at which the game pull tabs is the only game of chance conducted and the conduct of pull tabs is through an electronic-mechanical dispensing device, expenses incurred for this game of chance may be deducted from adjusted gross proceeds, based on the average adjusted

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<sup>238</sup> Section 53-06.1-11 was also amended by section 3 of House Bill No. 1355, chapter 485, and section 19 of House Bill No. 1168, chapter 484.

gross proceeds of all of an organization's authorized sites at which the game of pull tabs is conducted through electronic-mechanical dispensing devices, according to the following:

- a. On average adjusted gross proceeds not exceeding eight thousand dollars per quarter, an expense limitation of fifty percent.
- b. On average adjusted gross proceeds exceeding eight thousand dollars per quarter, but not exceeding twelve thousand dollars per quarter, an expense limitation of forty-five percent.
- c. On average adjusted gross proceeds exceeding twelve thousand dollars per quarter, but not exceeding sixteen thousand dollars per quarter, an expense limitation of forty percent.
- d. On average adjusted gross proceeds exceeding sixteen thousand dollars per quarter, an expense limitation of thirty-five percent.

Cash shorts incurred in games of chance are classified as expenses toward the expense limitation. Notwithstanding the limitations of this subsection, in addition to the expenses allowed to be deducted from adjusted gross proceeds, a licensed organization may deduct as an expense capital expenditures for security or video surveillance equipment used for controlling games of chance if the equipment is required by section 53-06.1-10 or rules adopted by the commission and the equipment is approved by the attorney general. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes. This subsection does not authorize violations of the rent limitations contained in this chapter.

4. In addition to the expense limitation provided in subsection 3, an organization that conducts the game of pull tabs at an authorized site may deduct as an expense two and one-half percent of the gross proceeds for this game of chance.

Approved March 29, 1995

Filed March 29, 1995

**CHAPTER 487****HOUSE BILL NO. 1365**

(Representatives Mutzenberger, Tollefson, Wilkie, Kelsch)  
(Senators Bowman, Krebsbach)

**RACING FUNDS USE**

AN ACT to amend and reenact subsection 2 of section 53-06.2-11 of the North Dakota Century Code, relating to uses of racing funds in excess of expenses.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 53-06.2-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to twenty-five percent of each wagering pool. Of this amount, the licensee may retain twenty-one percent for expenses. One-half of one percent must be paid to the ~~North Dakota racing~~ commission to be ~~used for the North Dakota~~ deposited in the purse fund. One-half of one percent must be paid to the commission to be deposited in the promotion fund. One-half of one percent must be paid to the ~~North Dakota racing~~ commission to be ~~used for the North Dakota~~ deposited in the breeders' fund. The remaining ~~three two and one-half~~ percent must be paid to the state treasurer to be deposited in the general fund.

Approved March 21, 1995

Filed March 21, 1995

## CHAPTER 488

### HOUSE BILL NO. 1199

(Representatives Wald, Gorman)  
(Senator Mathern)

## PRIZE NOTICES

AN ACT to provide for the regulation of prize notices; and to provide a penalty.

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

**SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

1. "Prize" means an item or service of value that is offered or awarded to a participant in a real or purported contest, competition, sweepstakes, puzzle, drawing, scheme, plan, or other selection process.
2. "Retail value" of a prize means:
  - a. A price at which the sponsor can substantiate that a substantial number of the prizes have been sold to the public in this state during the preceding year; or
  - b. If the sponsor is unable to satisfy the requirement in subdivision a, then no more than one and one-half times the amount the sponsor paid or would pay for the prize in a bona fide purchase from an unaffiliated seller.
3. "Sponsor" means a person that requires another person in this state to pay money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, or that creates the reasonable impression that such a payment is required.

**SECTION 2. Disclosures required.**

1. A sponsor may not require a person to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize. A sponsor may not use a solicitation that creates the reasonable impression that a payment is required, unless the sponsor first has delivered to the person written prize notice containing the following information:
  - a. The true name or names of the sponsor and the address of the sponsor's actual principal place of business;
  - b. The retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive;
  - c. A statement of the person's odds of receiving each prize identified in the notice;

- d. Any requirement that the person pay shipping or handling fees or any other charges to obtain or use a prize, including the nature and amount of the charges;
  - e. If receipt of the prize is subject to a restriction, a statement that a restriction applies, and a description of the restriction;
  - f. Any limitation on eligibility; and
  - g. If a sponsor represents that the person is a "winner", is a "finalist", has been "specially selected", is in "first place", or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, the written prize notice must contain a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.
2. The information required by subsection 1 must be presented in the following form:
  - a. The retail value and the statement of odds required must be stated in immediate proximity to each identification of a prize on the written notice and must be in the same size and boldness of type as the reference to the prize. The statement of odds must include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic numerals. The statement of odds must be in the following form:

\_\_\_\_\_ (number of prizes) out of \_\_\_\_\_ notices distributed.
  - b. If a person is required to pay a shipping or handling fee or any other charge to obtain a prize, to be eligible to obtain a prize, or participate in a contest, the following statement must appear in immediate proximity to each listing of the prize in the written prize notice, in not less than ten-point boldface type: YOU MUST PAY \$\_\_\_\_\_ TO RECEIVE THIS ITEM or YOU MUST PAY \$\_\_\_\_\_ TO COMPETE FOR THIS ITEM, whichever is applicable.
  - c. The statement required under subdivision g of subsection 1 must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize and must be in the same size and boldness of type as the representation.

**SECTION 3. Prize award required.** No later than thirty days after making the representation, a sponsor who represents to a person that the person has been awarded a prize shall provide the person with the prize, or with a voucher, certificate, or other document giving the person the unconditional right to receive the prize, or provide the person with either of the following items selected by the person:

1. Any other prize listed in the written prize notice that is available and that is of equal or greater value; or
2. The retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

**SECTION 4. Exemptions.**

1. This Act does not create liability for acts by the publisher, owner, agent, or employee of an advertising agency, a newspaper, periodical, radio station, television station, cable television system, or other advertising medium arising out of the publication or dissemination of a solicitation, notice, or promotion governed by this Act, unless the publisher, owner, agent, or employee had knowledge that the solicitation, notice, or promotion violated the requirements of this Act, or had a financial interest in the solicitation, notice, or promotion.
2. This Act does not apply to solicitations or representations, in connection with:
  - a. The sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club that is regulated by the federal trade commission under title 16, Code of Federal Regulations, part 425.1 concerning use of negative option plans by sellers in commerce.
  - b. The sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and after the receipt of the goods is given the opportunity to examine the goods and to receive a full refund of charges for the goods upon return of the goods undamaged.
  - c. A sale by a catalog seller that derives at least fifty percent of its annual revenues from the sale of products sold in connection with the distribution of catalogs of at least twenty-four pages that contain written descriptions or illustrations and sale prices for each item of merchandise, if the catalogs are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand.

**SECTION 5. Penalty - Remedies.**

1. A violation of this Act is an unlawful practice in violation of section 51-15-02 and is subject to applicable provisions of chapter 51-15.
2. A person who intentionally violates this Act is guilty of a class C felony. It is evidence of intent if the violation occurs after the attorney general has notified a person by certified mail that the person is in violation of this section.
3. A person suffering pecuniary loss because of an intentional violation of this section may bring an action in district court to recover costs, reasonable attorney fees, and the greater of five hundred dollars or twice the amount of the pecuniary loss.



4. This Act provides relief in addition to the remedies or penalties provided under other law.

Approved March 15, 1995

Filed March 15, 1995

# STATE GOVERNMENT

## CHAPTER 489

### HOUSE BILL NO. 1098

(Representatives Grosz, Boehm)

(At the request of the Governor)

## **NORTH DAKOTA-SASKATCHEWAN-MANITOBA BOUNDARY ADVISORY COMMITTEE ELIMINATED**

AN ACT to repeal section 54-01-17.2 of the North Dakota Century Code, relating to the North Dakota-Saskatchewan-Manitoba boundary advisory committee.

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

**SECTION 1. REPEAL.** Section 54-01-17.2 of the 1993 Supplement to the North Dakota Century Code is repealed.

Approved March 6, 1995

Filed March 6, 1995

## CHAPTER 490

### SENATE BILL NO. 2448

(Senators Streibel, Mutch, Robinson)  
(Representatives Carlson, Huether, Olson)

### GREAT SEAL USE

AN ACT to amend and reenact section 54-02-01 of the North Dakota Century Code, relating to use of the great seal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-02-01. Great seal - Permitted uses - Penalty for commercial use.**

1. The great seal of the state is that prescribed in section 2 of article XI of the Constitution of North Dakota. A description in writing of such seal must be deposited and recorded in the office of the secretary of state and must remain a public record. A reproduction of the great seal may be placed on any official form, document, or stationery of any agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, or instrumentality of the state or of any elected or appointed official of the state. Any use of the great seal on any other object or thing by any of the foregoing state entities or officials is prohibited unless approved by the secretary of state; provided however, that the state historical society and the parks and recreation department may, with the concurrence of the secretary of state, reproduce the great seal on any objects they offer for sale as souvenirs.
2. It is a class B misdemeanor for any person to:
  - a. Place or cause to be placed the great seal, or any reproduction of the great seal, on any political badge, button, insignia, pamphlet, folder, display card, sign, poster, billboard, or on any other public advertisement, or to otherwise use the great seal for any political purpose, as defined in section 16.1-10-02.
  - b. Place or cause to be placed on the great seal, or any reproduction thereof, any advertisement.
  - ~~b~~ c. Expose the great seal, or any reproduction thereof, to public view with any advertisement attached thereto.
  - ~~e~~ d. Utilize the great seal, or a copy or reproduction thereof, for any commercial purpose.

As used in this subsection, "advertisement" means any printed matter, device, picture, or symbol, no matter how presented to the senses, which informs the public that a good or service is available; and "commercial purpose" means with intent to produce a pecuniary gain through sale of a good or service. Notwithstanding any other provision of law, the secretary of state may grant a written request by a private vendor to reproduce official state forms and documents, containing a reproduction of the great seal, for resale to persons intending to submit the forms or documents to any state entity in the regular course of business. The secretary of state may also grant a written request by a publisher, educational institution, or author to reproduce the great seal in any research, reference, or educational publication containing a compilation of the great seals of other states.

Approved March 17, 1995  
Filed March 20, 1995

**CHAPTER 491****SENATE BILL NO. 2214**

(Government and Veterans Affairs Committee)

(At the request of the Secretary of State)

**ROUGH RIDER AWARD RECORDS RETENTION**

AN ACT to amend and reenact section 54-02-07 of the North Dakota Century Code, relating to Theodore Roosevelt rough rider award records.

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

**SECTION 1. AMENDMENT.** Section 54-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-02-07. Theodore Roosevelt rough rider award.** There shall be awarded by the state of North Dakota in the name of the legislative assembly and the citizens of this state, an award to be known as the Theodore Roosevelt rough rider award. Such award shall be the highest recognition by the state of present or former North Dakotans who have been influenced by this state in achieving national recognition in their fields of endeavor, thereby reflecting credit and honor upon this state and its citizens. The award shall not be for momentary success, but only for genuine achievements of lasting significance. It is the intent of this section to guard the dignity of the rough rider award for recipients of the past as well as the future. The award, of a type and design approved by the governor, must be awarded by the governor upon the concurrence of the secretary of state and the superintendent of the state historical board. A record of all such awards and pertinent information in regard to each recipient must be retained by the ~~secretary of state~~ archivist.

Approved March 7, 1995

Filed March 7, 1995

**CHAPTER 492****HOUSE BILL NO. 1412**

(Representatives Tollefson, Martinson, Price, Kelsch)  
(Senators Wanzek, Mushik)

**SQUARE DANCE DESIGNATED STATE DANCE**

AN ACT to create and enact a new section to chapter 54-02 of the North Dakota Century Code, relating to the state dance.

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

**SECTION 1.** A new section to chapter 54-02 of the North Dakota Century Code is created and enacted as follows:

**State dance.** The square dance, in consideration of its contribution to the art and culture of North Dakota, is designated the official American folk dance of North Dakota.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 493

## HOUSE BILL NO. 1385

(Representatives Monson, Olson, Thompson)  
(Senators Christmann, Kinnoin, Tallackson)

## LEGISLATIVE REDISTRICTING CHANGES

AN ACT to amend and reenact subsections 4, 16, and 33 of section 54-03-01.9 of the North Dakota Century Code, relating to legislative redistricting.

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

SECTION 1. AMENDMENT. Subsections 4, 16, and 33 of section 54-03-01.9 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. District 4 consists of all of Mountrail County; those portions of Dunn County; and McKenzie County; ~~and Mercer County~~ within the Fort Berthold reservation; that part of McLean County west of a line commencing at the intersection of the McLean County line and the east side of township 147-85, thence north to the northeast corner of Saint Mary township, thence east to the southeast corner of McGinnis township, thence north to the northeast corner of McGinnis township, thence west to the southwest corner of Douglas township, thence north to the county line; and Anna, Berthold, Burt, Cameron, Carpio, Des Lacs, Evergreen, Foxholm, Hiddenwood, Hilton, Kirkelie, Linton, Lund, Mandan, Mayland, Orlien, Passport, Ree, Rice Lake, Rolling Green, Ryder, Saint Mary, Shealey, Spring Lake, Tolgen, Torning, and Vang townships in Ward County.
16. District 16 consists of all of Walsh County except those portions contained in District 23; and Crystal, Drayton, Elora, ~~Gardar~~ Lincoln, Midland, and Saint Thomas townships in Pembina County.
33. District 33 consists of all of Oliver County; ~~all of and Mercer County except that portion within the Fort Berthold reservation;~~ and that part of Dunn County east and south of a line commencing at the southwest corner of section 19 of township 141-92, thence north to the northwest corner of township 144-92, thence east to the southwest corner of section 34 of township 145-92, thence north to the boundary of the Fort Berthold reservation, thence east following the Fort Berthold reservation boundary to the county line.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 494

### HOUSE BILL NO. 1435

(Representatives Kretschmar, Dorso, Martin, Oban)  
(Senators G. Nelson, Wogsland)

## LEGISLATIVE ASSEMBLY RECONVENED SESSIONS

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the authority of the legislative council; and to amend and reenact sections 54-03-02 and 54-03-02.1 of the North Dakota Century Code, relating to reconvened sessions of the legislative assembly.

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

**SECTION 1. AMENDMENT.** Section 54-03-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-03-02. When legislative assembly meets.**

1. The legislative assembly shall meet at the seat of government in the month of December following the election of the members thereof for organizational and orientation purposes and shall thereafter recess until the time provided in subsection 2.
2. The legislative assembly shall reconvene at twelve noon on the first Tuesday after the third day in January of the ~~next~~ year ~~or until~~ following the organizational session as provided in subsection 1 or at twelve noon on a date selected by the legislative council but not earlier than January second nor later than January eleventh of the year following the organizational session and, following the close of business of the regular session, shall adjourn subject to subsection 3.
3. Notwithstanding a motion to adjourn sine die, the legislative assembly shall reconvene as determined by the legislative council. The number of natural days used may not exceed the number of natural days available under the constitution which have not been previously used by that legislative assembly in regular session under subsection 2.

**SECTION 2. AMENDMENT.** Section 54-03-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-02.1. Definitions.** For the purposes of this chapter and chapter 54-03.1; ~~the following terms have the following meanings:~~

1. "Organizational session" means the meeting of the legislative assembly for organizational and orientation purposes held during the month of December in the even-numbered years.
2. "Regular session" means the legislative session commencing in January of the odd-numbered years and includes any reconvened legislative session, as provided in section 54-03-02.



SECTION 3. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Authority to determine if legislative assembly meets. The council may issue a call for the legislative assembly to convene after it has adjourned under subsection 2 of section 54-03-02. The length of a legislative session called under this section may not exceed the number of natural days available under the constitution which have not been used by that legislative assembly. The council may exercise this authority, and the legislative assembly shall meet, regardless of whether the motion to close the regular session of the legislative assembly was to recess to a time certain, adjourn to a time certain, or adjourn sine die.

Filed April 7, 1995

NOTE: The Governor's veto of House Bill No. 1435 was not sustained. For the text of the Governor's veto message see chapter 636.

**CHAPTER 495****HOUSE BILL NO. 1203**

(Representatives Carlisle, DeWitz, Dobrinski, Froseth, Sitz)

**CENTURY CODE RETURN AFTER LEGISLATIVE  
SERVICE**

AN ACT to amend and reenact section 54-03-23 of the North Dakota Century Code, relating to return of legislators' copies of the North Dakota Century Code after termination of service.

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

**SECTION 1. AMENDMENT.** Section 54-03-23 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-23. Century Code distributed to each legislator - Retention.** Each member of the legislative assembly is entitled to receive a current set of the North Dakota Century Code as provided in section 46-04-01. The Upon the election of a member of the legislative assembly, the secretary of state shall request of that member whether that member wants to receive a set of the code under this section. The secretary of state shall deliver a set of the code to each member who elects to receive a copy of the code. A legislator who elects to receive a set of the code is entitled to current supplements and volumes as provided in section 46-04-03 to maintain the code during the legislator's service. The code received by a legislator under this section is not subject to section 46-04-04. After a legislator's service in the legislative assembly is terminated, the secretary of state shall inform the legislator that the legislator may elect to retain the set of the code or to return the set at the expense of the secretary of state. If the legislator elects to retain the set, the secretary of state shall inform the legislator how to obtain a subscription to maintain the legislator's code.

Approved March 14, 1995

Filed March 14, 1995

## CHAPTER 496

### SENATE BILL NO. 2167 (Government and Veterans Affairs Committee) (At the request of the Secretary of State)

## LOBBYING REGULATIONS

AN ACT to amend and reenact subsection 2 of section 54-05.1-02, sections 54-05.1-03, and 54-05.1-07 of the North Dakota Century Code, relating to legislative lobbying; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 54-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. This chapter does not apply to any person who is:
  - a. A legislator.
  - b. A private citizen appearing on his own behalf.
  - c. An employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in the employee's that person's official capacity.
  - d. Invited by the chairman of the legislative council or by the chairman of, an interim committee of the legislative council, or a standing committee of the legislative assembly to appear before the council or, interim committee, or standing committee for the purpose of providing information.
  - e. An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization or a business or industry if the individual is introduced to the committee by the registered lobbyist for the trade or professional organization or the business or industry.

**SECTION 2. AMENDMENT.** Section 54-05.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-05.1-03. Registration as a lobbyist - Fee - Filing of information - Public inspection - Certificate of registration.**

1. Any person who shall engage himself or be engaged by any other person either on a part-time or on a full-time basis for any of the activities listed in section 54-05.1-02, shall, before doing anything in furtherance of such purposes, register with the secretary of state and receive a certificate of registration and a distinctive lobbyist identification badge that must be prominently worn by the lobbyist when engaged in any of the activities listed in section 54-05.1-02 while on the capitol grounds. In lieu of wearing the official badge provided by the secretary of state, a lobbyist

may wear a reasonable reproduction of the official badge that contains the name of the lobbyist and any of the following: the word lobbyist, the registration number of the lobbyist, or the organization name of the lobbyist in characters no smaller than one-quarter inch [6.35 millimeters]. The registrant shall state in writing ~~his~~ the registrant's full name and business address, the name and address of the person or persons upon whose behalf ~~he~~ the registrant appears, all persons, corporations, limited liability companies, associations, groups, or organizations in whose interest ~~he~~ the registrant appears or works, the duration of such employment or appearances, and by whom ~~he~~ the registrant is paid or is to be paid. The registration period commences on July first and expires on ~~December thirty-first~~ June thirtieth of each the following calendar year unless an earlier expiration date is requested by the registrant. Lobbyists required to be registered shall file with the secretary of state, ~~within ten days~~ prior to the issuance of a certificate of registration, a written authorization to act as lobbyist. Such authorization must be signed by the person or official of the corporation, limited liability company, association, group, or organization employing such lobbyist and may be filed by facsimile transmission. The secretary of state shall charge a fee of twenty dollars for registering each lobbyist and the first person or entity represented by the lobbyist and an additional fee of five dollars for each subsequent person or entity represented by the lobbyist.

2. Each person so registering to act as a lobbyist shall, on or before ~~December thirty-first in each year registered~~ August first following the expiration of the registration period, file with the secretary of state a detailed report. The report must include a statement as to each expenditure, if any, of twenty-five dollars or more expended on any single occasion during the legislative session or the interim, as the case may be, on any individual in carrying out ~~his~~ the lobbyist's work or include a statement that no reportable expenditures were made during the reporting period. No state official or agency may require reporting of lobbyist expenditures other than is required under this subsection. The secretary of state shall provide a prescribed form for reporting pursuant to this chapter.
3. All information required to be filed under the provisions of this section with the secretary of state and that previously filed, must be compiled by the secretary of state within forty days after the close of the period for which such information is filed, and such files must be open and accessible for public inspection during the normal working hours.

**SECTION 3. AMENDMENT.** Section 54-05.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-05.1-07. Penalty.** Any person who violates any provisions of this chapter is guilty of a class B misdemeanor except that a violation of section 54-05.1-02 or 54-05.1-03 is an infraction.

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

Approved March 7, 1995

Filed March 7, 1995

## CHAPTER 497

## HOUSE BILL NO. 1055

(Legislative Council)

(Interim Legislative Audit and Fiscal Review Committee)

(Representatives Dorso, Howard)

## STATE AGENCY BANK CLEARING ACCOUNTS

AN ACT to amend and reenact section 54-06-08.1 of the North Dakota Century Code, relating to accounts maintained by state agencies at banks other than the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-08.1 of the North Dakota Century Code is amended and reenacted as follows:

54-06-08.1. ~~Cash~~ Clearing accounts and cash balances maintained by state agencies - ~~Petty cash funds~~ - Bank accounts. All departments, institutions, or agencies of the state may maintain, subject to approval of the state auditor and the state treasurer, ~~maintain such reasonable minimum balance as may be necessary in the Bank of North Dakota, or, if the state entity is located outside Bismarck, in another state or federally chartered financial institution, an account for clearing or cashing of checks and making change. Such departments are hereby authorized, subject to approval of the state auditor and the state treasurer, to maintain minimum petty cash funds and may establish bank accounts in the Bank of North Dakota. It is not the intent hereof to deny to a institution or agency located outside of Bismarck the right to establish bank accounts in other state or federally chartered banks. To accommodate peak processing periods, the balance in an account at a financial institution other than the Bank of North Dakota may exceed the maximum amount of federal insurance coverage available if the excess in the account is secured by another form of security or security deposit; however, the balance may exceed the maximum amount of federal insurance coverage available only for the time it takes to clear the checks. Any check written on the account may be used only to transfer funds to the Bank of North Dakota or the state treasurer. A financial institution shall report to the state auditor in writing within thirty days after opening or closing an account for a state entity under this section. Subject to the approval of the state auditor, a state entity may maintain a cash balance reasonable for the conduct of business at the location of the entity.~~

Approved March 28, 1995

Filed March 28, 1995

**CHAPTER 498****HOUSE BILL NO. 1120**

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

**CREDIT CARD PAYMENTS TO STATE AGENCIES**

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to payments to state agencies, boards, or commissions, the judicial branch, and political subdivisions by credit card.

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

**SECTION 1.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**Payment by credit card.** A state agency, board, or commission, the judicial branch, or any political subdivision may accept payment by credit card of any fee, interest, penalty, tax, or other payment that is due or collectible by the agency, board, or commission. To assess and account for the credit card interchange to the respective state agency, board, or commission, the Bank of North Dakota is the processing depository for credit card transactions of state agencies, boards, or commissions. The judicial branch may accept payment by credit card for any fees, costs, or other assessments required or imposed under state law or court rule.

Approved March 17, 1995  
Filed March 17, 1995

## CHAPTER 499

### SENATE BILL NO. 2095

(Senators Nalewaja, St. Aubyn, Robinson, Grindberg)  
(Representatives Kelsch, Poolman)

## STATE EMPLOYEE LEAVE SHARING

AN ACT to amend and reenact subsections 1, 3, and 4 of section 54-06-14.1 and subsections 1 and 3 of section 54-06-14.2 of the North Dakota Century Code, relating to the state annual leave and sick leave sharing programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 1, 3, and 4 of section 54-06-14.1 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section:
  - a. "Household members" means those persons who reside in the same home, who have reciprocal duties to and do provide financial support for one another. This term includes foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house when the living style is primarily that of a dormitory or commune.
  - b. "Relative of the employee" is limited to the spouse, child, stepchild, grandchild, grandparent, stepparent, or parent of an employee.
  - c. "Severe" or "extraordinary" means serious, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.
  - d. "State employee" means a permanent employee with over six months continuous service with the state. It does not include employees in probationary status or employees on temporary or other limited term appointments.
3. A state employee is eligible to receive shared leave pursuant to the following conditions:
  - a. The chief administrative officer of the employee determines that the employee meets the criteria described in this section.
  - b. The employee has abided by state policies regarding the use of sick leave.
  - c. The employee's use of shared leave, including both annual and sick leave, does not exceed four months in any twelve-month period.
4. A state employee may donate annual leave to another state employee only pursuant to the following conditions:

- a. The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory time off due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature, and involves the employee, a relative of the employee, or a household member of the employee;
- b. The condition has caused, or is likely to cause, the receiving employee to go on leave without pay or terminate employment; and
- c. The donating employee donates leave in full-hour increments and retains a leave balance of at least ~~eighty~~ forty hours.

**SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 54-06-14.2 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section:
  - a. "Severe" or "extraordinary" means serious, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.
  - b. "State employee" means a permanent employee with over six months continuous service with the state. It does not include employees in probationary status or employees on temporary or other limited term appointments.
3. A state employee may be eligible to receive shared leave pursuant to the following conditions:
  - a. The chief administrative officer of the employee determines that the employee meets the criteria described in this section.
  - b. The employee has abided by state policies regarding the use of sick leave.
  - c. The employee's use of shared leave, including both sick and annual leave, does not exceed four months in any twelve-month period.

Approved March 15, 1995  
Filed March 15, 1995



**CHAPTER 500****SENATE BILL NO. 2511**

(Senator Heinrich)

**PUBLIC EMPLOYEE PERSONNEL FILE ACCESS  
NOTICE**

AN ACT to amend and reenact section 54-06-21 of the North Dakota Century Code, relating to notice of access to public employee personnel files.

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

**SECTION 1. AMENDMENT.** Section 54-06-21 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-06-21. Public employee personnel records - Administration - Access.** The official personnel file on each employee is the file maintained under the supervision of the agency head or the agency head's designated representative.

1. No documents that address an employee's character or performance may be placed in the file unless the employee has had the opportunity to read the material. The employee must acknowledge that the employee has read the material by signing the actual copy to be filed or an attachment to the actual copy to be filed, with the understanding that the signature merely signifies that the employee has read the material to be filed and does not necessarily indicate agreement with its content. If the employee refuses to sign the copy to be filed, the agency head or the agency head's designated representative shall indicate on the copy that the employee was shown the material, was requested to sign the material to verify that the material had been read, and that the employee refused to sign the copy to be filed. In the presence of the employee and a witness, the agency head or the agency head's designated representative shall sign and date a statement verifying the refusal of the employee to sign the copy to be filed. The material must then be placed in the file.
2. The employee has the right to answer any material filed, and any answer must be attached to the file copy. The employee's answer to material filed may not be used as the basis for any subsequent adverse personnel action. If any material is found to be without merit or unfounded through an established grievance procedure, it must be immediately removed from the file and may not be used in any subsequent actions or proceedings against the employee.
3. The employee or the employee's designated representative must be permitted to examine the employee's official personnel file by appointment during normal business hours.
4. No anonymous letters or materials may be placed in the employee's file.
5. The employee must be permitted to reproduce at the employee's expense any material in the employee's file.

6. An employee may file a grievance regarding nonevaluation material placed in the employee's personnel file. A grievance is limited to an internal agency grievance unless such material is merged into a disciplinary proceeding.
7. This section does not prohibit administrators from maintaining written notes or records of an employee's performance separate from the personnel file for the purpose of preparing evaluations or possible disciplinary action.
8. Administrators are encouraged to place in the employee's file information of a positive nature, including any such material received from outside competent and responsible sources, indicating special competencies, achievements, performances, or contributions of a professional or civic nature.

★ Except when the employing agency inserts only salary, insurance, medical, tax, workers' compensation, pretax benefits, or deferred compensation information or employment forms, a record of access must be maintained by the employing agency and must be provided to the employee when the employee examines the employee's file. As used in this section, the term "public employee" means any person employed by the state and does not include persons employed by any political subdivision of the state.

Approved March 27, 1995

Filed March 28, 1995

## CHAPTER 501

### HOUSE BILL NO. 1489

(Representatives Stenehjem, Rydell, Gorder)  
(Senators Lips, St. Aubyn, Tallackson)

## STATE EMPLOYEES COMPENSATION COMMISSION ELECTIONS

AN ACT to create and enact five new subsections to section 54-06-25 of the North Dakota Century Code, relating to the election of members, posting of election requirements, and eligibility of candidates for the state employees compensation commission; to amend and reenact subsection 2 of section 54-06-25 of the North Dakota Century Code, relating to eligibility to vote and eligibility of candidates for election to the state employees compensation commission; and to declare an emergency.

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

**SECTION 1.** Five new subsections to section 54-06-25 of the North Dakota Century Code are created and enacted as follows:

Each member of the classified service may be a candidate for election to the state employees compensation commission. A member of the nonclassified service may be a candidate for election to the commission if the employee occupies a regularly funded and approved position. In order to vote for a candidate in the election to fill a vacancy on the commission, an employee must be a member of the classified service or must occupy a regularly funded and approved position. Student and temporary employees, elected state officials, and appointees of the governor are not eligible to serve on the commission, participate as a candidate for election to the commission, or vote for members of the commission.

The commissioner of labor shall ensure that a notice of an opening on the commission and the election is provided to an officer at each agency and institution. The officer at each agency and institution shall post the notice in a conspicuous place. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of the election, and where to obtain the nomination petitions for filing.

In order to be placed on the commission ballot, an employee shall contact the commissioner of labor for a petition form. The petition form must be returned to the commissioner of labor no more than twenty calendar days after the publishing date of the notice by the commissioner of labor with at least one hundred signatures of eligible state employees. Petition forms that are not complete, or are returned after the required date, must be declared void.

The ballot must be prepared by the commissioner of labor and distributed to each agency and institution payroll officer. An officer of each agency and institution shall provide mailing labels for all qualified employees to the commissioner of labor upon the commissioner's

request. A ballot for the election must be distributed with each employee's payroll check on the employee's regularly scheduled payday.

Employees of the commissioner of labor shall count the ballots following the final day that the ballots must be returned. Each candidate may have one overseer present at the ballot counting who may examine each ballot as to its sufficiency after the ballot has been counted. A candidate may act as that candidate's overseer. If a candidate wishes to designate a representative to act as that candidate's overseer, the candidate must provide a notarized authorization to the election committee at the counting of ballots. An overseer may act on behalf of more than one candidate; however, the overseer must show required authorization from each candidate represented. The overseer may question the decision of the ballot counters regarding a ballot immediately after the counting of the ballot. If questioned, the comments of the overseer must be heard. The commissioner of labor or the commissioner's representative shall decide if the complaint is valid and whether the ballot will be accepted. The decision of the commissioner or the commissioner's representative is final and must be given in writing. Once all ballots have been counted and all questions raised by the overseers have been decided by the commissioner or the commissioner's representative, the election is closed and results must be declared final. The commissioner of labor shall notify all candidates of the election results within ten working days of the election.

**SECTION 2. AMENDMENT.** Subsection 2 of section 54-06-25 of the North Dakota Century Code is amended and reenacted as follows:

2. The governor or the governor's designee is a member of the commission and serves as chairman. Four members of the legislative assembly appointed by the chairman of the legislative council are members of the commission. Four state employees; elected at large by a ballot of all state employees; are members of the commission, three of whom must be members of the classified service of the state and one of whom must be a member of the nonclassified service of the state. The commissioner of labor shall conduct the election for the employee representatives. All commission members serve for a term of two years and may be reappointed or reelected for additional terms of office. The state employee members' terms begin on July first of the year they are elected. The terms of office of members who are members of the legislative assembly and the governor's designee begin on July first of each odd-numbered year. Of the initial state employees who are elected to the commission, one of the members of the classified service and the member of the nonclassified service must be elected for a one-year term and the other two elected state employees must be elected for a two-year term, and before the conclusion of each subsequent term, an election must be held to replace the two members whose terms will end in that year. No more than one employee from the same institution or agency may serve on the commission at the same time. If two or more employees from the same institution or agency appear on the ballot at the same time, the employee with the highest vote total is elected to the position. If a member of the commission moves to another agency where another current member of the commission is employed, then the moving member must resign. Vacancies on the commission must be filled by the person who received the next highest vote total in the previous election.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 11, 1995

Filed April 12, 1995

**CHAPTER 502****SENATE BILL NO. 2041**

(Legislative Council)  
(Interim Budget Committee on Youth Services)  
(Senator Robinson)  
(Representatives Rydell, Boucher)

**CHILDREN'S SERVICES COORDINATING COMMITTEE  
DUTIES**

AN ACT to create and enact a new subsection to section 54-07-01 of the North Dakota Century Code, relating to the duty of the governor to report on the status of children and families in the state; and to amend and reenact sections 54-56-03 and 54-56-04 of the North Dakota Century Code, relating to the duties and powers of the children's services coordinating committee.

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

**SECTION 1.** A new subsection to section 54-07-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Shall produce and deliver to the legislative assembly by December tenth of each even-numbered year a report on the status of children and families and proposals for addressing the needs of children and families.

**SECTION 2. AMENDMENT.** Section 54-56-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-56-03. Functions.**

1. The committee shall ~~plan~~:
  - a. Plan for and coordinate delivery of services to children and adolescents who are abused, neglected, emotionally disturbed, mentally ill, medically disabled, runaways, homeless, deprived, school dropouts, school-age parents, chemical or alcohol abusers, unruly, or delinquent. ~~The committee shall foster~~
  - b. Foster preventive strategies and early intervention to strengthen families in their capacity to parent children.
2. The committee may coordinate, sponsor, or oversee interagency or intergovernmental projects and programs for children, or projects and programs that require the participation of both governmental and private entities.

No funds, grants, gifts, or services may be used for the purposes of direct provision of contraception services, abortion, or abortion referrals to minors.

**SECTION 3. AMENDMENT.** Section 54-56-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-56-04. Charter public corporations - Duties.** The children's services coordinating committee may charter public corporations or designate organizations to serve as regional and tribal children's services coordinating committees to implement programs for the classes of children and programs described in section 54-56-03. The committee shall prescribe conditions for the creation, continuance, and duration of those corporations or designations. Each corporation must possess all powers and perform all the duties usual to corporations for public purposes or conferred upon it by law. Under its name, it may sue and be sued; enter into contracts; receive and expend moneys; employ personnel; and convey property that comes into its possession by will or otherwise. The employees of those corporations are not liable for acts performed within the scope of their employment, as defined in section 26-1-21-10-1. After approval by the children's services coordinating committee, a corporate charter becomes effective upon filing with the secretary of state.

Approved March 21, 1995

Filed March 23, 1995

## CHAPTER 503

## HOUSE BILL NO. 1129

(Agriculture Committee)

(At the request of the Office of Management and Budget)

CENTENNIAL TREES PROGRAM ADMINISTERED BY  
STATE FORESTER

AN ACT to amend and reenact section 1 of chapter 573 of the 1991 Session Laws, relating to the centennial trees program and administration of the program by the state forester; and to provide for legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1 of chapter 573 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 1. Centennial trees commission program. There is hereby created the centennial trees commission which consists of the lieutenant governor and six additional members appointed by the governor for two year terms. The terms of three members expire on June thirtieth of each year or when successors are duly appointed and qualified. Vacancies must be filled by appointment of the governor.

Duties of commission. To work to achieve the goal of planting one hundred million trees during the decade of the 1990's; the commission may:

1. Expend funds within the limits of legislative appropriations; together with the interest therefrom; which are received from governmental and private entities; or granted for the centennial trees program;
2. Make grants to further the purpose of the program;
3. Select and appoint personnel; establish their salaries; and provide for their expenses; to carry out the policies and directives of the commission;
4. Create advisory committees for special purposes and reimburse the members for travel expenses in the same manner as allowed for state employees; and
5. Cooperate with federal, state, and local agencies and private organizations.

The centennial trees program is created for the public purpose of fostering the goal of planting one hundred million trees in North Dakota during the decade of the 1990s.

Centennial trees program trust fund. A special fund known as the centennial trees program trust fund is established in the state treasury. Income earned on moneys in the fund must be credited to the fund. The state forester shall deposit all funds received for the program from governmental and private sources in the trust fund. Moneys in the fund may be spent directly or by grants and contracts by the centennial trees commission state forester within the limits of legislative



appropriations for defraying the costs associated with execution of the centennial trees program.

Authority for local governments to participate. Any political subdivision of the state may provide financial aid or supportive services to the centennial trees program.

~~Commission to adopt rules. The centennial trees commission may adopt rules to implement the provisions of this chapter.~~

~~Biennial report to the legislative assembly. The centennial trees commission shall present a report each biennium to the legislative assembly which must include information on the activities and the revenues and expenses of the commission.~~

**SECTION 2. Legislative intent.** It is the intent of the legislative assembly that the governor appoint a seven-member advisory committee to work with the state forester to promote the centennial trees program.

Approved April 5, 1995  
Filed April 5, 1995

## CHAPTER 504

## HOUSE BILL NO. 1439

(Representatives Carlson, Kelsch, Clayburgh)  
(Senators Nalewaja, W. Stenehjem, Traynor)

## ASSISTANT ATTORNEYS GENERAL EMPLOYED BY AGENCIES

AN ACT to amend and reenact sections 54-12-08 and 65-02-06 of the North Dakota Century Code, relating to assistant attorneys general employed by agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>239</sup> SECTION 1. AMENDMENT. Section 54-12-08 of the North Dakota Century Code is amended and reenacted as follows:

54-12-08. Assistant and special assistant attorneys general - Appointment - Revocation - Compensation. ~~The attorney general also, when he deems it necessary, may after~~ After consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the attorney general may appoint assistant or special assistant attorneys general; and no to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel; in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the attorney general. The appointment must be in writing. The workers compensation bureau, the department of transportation, the state tax commissioner, the public service commission, the commissioner of insurance, the board of higher education, and the securities commissioner may employ attorneys to represent them. These entities shall pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations. The attorneys that represent these entities must be special assistant attorneys general appointed by the attorney general pursuant to this section. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities. Good cause includes an inadequate level of experience, competence, or ethical standards. The powers conferred upon such special assistant attorneys general shall be are the same as are exercised by the regular assistant attorneys general, ~~when such~~ unless the powers are not limited specifically by the terms of such appointment. ~~Any such~~ An appointment is revocable at the pleasure of the attorney general. ~~It~~ The appointment may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, ~~it~~ the compensation must be paid out of the funds appropriated therefor. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required

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<sup>239</sup> Section 54-12-08 was also amended by section 2 of House Bill No. 1058, chapter 243.

payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health and consolidated laboratories, and the state hospital.

<sup>240</sup> **SECTION 2. AMENDMENT.** Section 65-02-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-06. Expenditures by bureau from fund - Employment of full-time special assistant ~~attorney~~ attorneys general authorized.** With prior approval of the emergency commission, the bureau may make necessary expenditures to implement reinsurance. The bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this title. The salaries and compensation of the director of the bureau and of all employees of the bureau, and all other authorized expenses thereof, including the premium on the bond required of the state treasurer under section 65-04-30, must be paid out of the fund. The bureau may employ ~~as its full-time attorney~~ a duly appointed special assistant ~~attorney~~ attorneys general and pay from the fund the entire salary of ~~the~~ each special assistant attorney general.

Approved April 11, 1995  
Filed April 12, 1995

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<sup>240</sup> Section 65-02-06 was also amended by section 1 of House Bill No. 1226, chapter 613.

**CHAPTER 505****SENATE BILL NO. 2096**

(Senators Nalewaja, Grindberg, Krebsbach, Redlin, Robinson)  
(Representative Kelsch)

**BLOCK HOUSE PROGRAM**

AN ACT to provide for a block house program.

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

**SECTION 1. Block house defined.** As used in this Act, "block house" means a house, designated by a sign bearing a recognized symbol, occupied by a responsible adult, where a child may seek help when the child faces an emergency such as being bullied, followed, threatened, or hurt while walking or playing in the neighborhood.

**SECTION 2. Block house program.** The attorney general, through the state bureau of criminal investigation, and in cooperation with local law enforcement agencies, shall:

1. Develop guidelines for the establishment and operation of block house programs.
2. Adopt standard symbols or signs to be used statewide by block house programs. The symbol or sign must be one that is not easily reproduced and is easily seen from a distance. The symbols or signs must be numbered.
3. Develop or adopt a model application form for designation of a home as a block house.
4. Make information available to nonprofit organizations, school districts, business entities, and local law enforcement agencies concerning the program.
5. Publicize the program in as many ways as is reasonably practical.
6. Assist in conducting background checks on a person who applies to have a home designated as a block house in a block house program.

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 506****HOUSE BILL NO. 1141**

(Government and Veterans Affairs Committee)  
(At the request of the Central Personnel Division)

**SEVERANCE PAY FOR STATE EMPLOYEES**

AN ACT to amend and reenact section 54-14-04.3 of the North Dakota Century Code, relating to state employee severance pay; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-14-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-14-04.3. Severance pay - Definition - Settlements.**

1. For the purposes of this section, "severance pay" means compensation received, upon termination of employment, for reasons primarily beyond the control of the state employee or officer; ~~for the purpose of assuring an employee or officer funds to depend upon while another job is sought.~~ Severance pay does not include payments made to a terminated employee or officer for accrued annual or sick leave, or compensatory leave, where such payments are authorized.
2. ~~No~~ Except as provided in subsection 3, no state employee or officer is entitled to severance pay upon termination of employment if the employee or officer quit employment voluntarily or resigned of his or her own accord, or was dismissed for gross neglect of duty, gross misconduct while on duty, or for other good cause. A state employee or officer may be entitled to severance pay if the employee or officer was dismissed from employment because of reductions in staff or temporary or permanent layoffs, or for other reasons primarily beyond the control of the employee or officer. This section ~~may does not be construed to~~ affect the rights of employees or officers in salary or wage disputes which are the subject of out-of-court settlements.
3. A state agency may, within the limits of its legislative appropriations, provide financial incentives to encourage an employee to retire or resign if the resulting departure will increase agency efficiencies or reduce expenses.

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

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 507

## SENATE BILL NO. 2032

(Legislative Council)

(Interim Budget Section)

(Senators Tallackson, G. Nelson, Mathern)

(Representatives Hausauer, Wald, Kaldor)

## EMERGENCY COMMISSION POWERS AND DUTIES

AN ACT to create and enact section 54-16-00.1 of the North Dakota Century Code, relating to definitions; and to amend and reenact sections 54-16-01, 54-16-02, 54-16-03, 54-16-04, 54-16-04.1, 54-16-04.2, 54-16-05, 54-16-08, 54-16-09, 54-16-10, 54-16-11, 54-16-11.1, and 54-16-12 of the North Dakota Century Code, relating to the powers and duties of the emergency commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 54-16-00.1 of the North Dakota Century Code is created and enacted as follows:

54-16-00.1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Emergency" means calamity or unforeseen happening subsequent to the time the appropriation was made and which was clearly not within the contemplation of the legislative assembly and the governor.
2. "State officer" means an elected or appointed officer, board, commission, director, or employee of the state having the authority to transfer or expend any money appropriated by the legislative assembly.

<sup>241</sup> SECTION 2. AMENDMENT. Section 54-16-01 of the North Dakota Century Code is amended and reenacted as follows:

54-16-01. Emergency commission - Members - Organization - Quorum - Meetings - Duties. The emergency commission shall consist consists of the governor, the commissioner of agriculture, and the secretary of state; except when the membership is expanded as herein provided. Whenever, during the biennium, an allocation or allocations out of If a request is to be considered for a transfer of spending authority from the state contingency fund contingencies appropriation, a transfer of money or spending authority between funds and or line items, or an approval to spend federal funds in excess of ten thousand dollars is to be made to any institution or department of government, the chairman chairmen of the senate appropriations committee and the chairman of the and house of representatives appropriations committee must be committees are members of the commission. The aggregate total of transfers from the state contingency fund, within the limits of legislative appropriations, can exceed five hundred thousand dollars only to the extent that requests for transfers from the state contingency fund have been

<sup>241</sup> Section 54-16-01 was also amended by section 1 of Senate Bill No. 2288, chapter 508.

approved by the budget section of the legislative council. If the chairman of either an appropriations committee should die or resign ceases to be a member of the legislative assembly, the vice chairman of that committee shall become a member of succeeds to that position on the commission. A An appropriations committee vice chairman may also serve in the place of the appropriations committee chairman as a member of the commission at the request of the committee chairman, if the committee chairman is unable to attend a particular commission meeting. Two members of the commission constitute a quorum, except when the membership is expanded, in which case four members constitute a quorum. The governor must be is the chairman of the commission; and the secretary of state must be is the secretary of the commission. The commission shall meet upon at the call of the chairman. The commission shall exercise the powers and perform the duties imposed upon it by law.

SECTION 3. AMENDMENT. Section 54-16-02 of the North Dakota Century Code is amended and reenacted as follows:

54-16-02. Proceedings entered in record book - Orders not valid unless entered in minutes. The proceedings of the emergency commission must be entered in a record book, or a minute book. No order of the commission is are not valid unless so entered in the commission's minutes.

SECTION 4. AMENDMENT. Section 54-16-03 of the North Dakota Century Code is amended and reenacted as follows:

54-16-03. Unlawful to expend more than appropriated - May secure order approval from commission for use of other funds - Deficit void. No A state officer; or board; commissioners; directors; or other officers having the control or management of any public institution of the state; or any state activity or enterprise; or having the responsibility of disbursing or expending any money appropriated by the state; may not expend, or agree or contract to expend in connection therewith, any amount in excess of the sum appropriated therefor for that expenditure, or use and may not expend an amount appropriated for any specific purpose or fund or for any other purpose without first having secured from the emergency commission an order duly made and entered authorizing such use of the fund prior approval in the form of a transfer approval or expenditure authorization as provided in this chapter. The emergency commission shall receive information from the office of management and budget shall provide information to the emergency commission with respect to all emergency requests. Any debt or deficit created shall be absolutely by a state officer in violation of this section is void. The emergency commission may not approve an expenditure of institutional income, other than gifts or grants, in excess of the institutional income appropriated to the institution by the legislative assembly.

<sup>242</sup> SECTION 5. AMENDMENT. Section 54-16-04 of the North Dakota Century Code is amended and reenacted as follows:

54-16-04. May order transfer of moneys between funds - Line item transfers - Order may draw from state treasury. Whenever it is made to appear A state officer may present to the emergency commission by an itemized, verified petition of any board; commission; or officer authorized to expend public funds; and after receiving

<sup>242</sup> Section 54-16-04 was also amended by section 40 of Senate Bill No. 2070, chapter 54, and section 2 of Senate Bill No. 2288, chapter 508.

requesting approval of a transfer of spending authority from the state contingencies appropriation, a transfer of money or spending authority between funds or line items, or expenditure of federal funds. The emergency commission shall request and receive information from the director of the office of management and budget; regarding the petition. If the emergency commission finds that an emergency exists, the emergency commission shall assume that an emergency exists and may order money or spending authority transferred from one fund or line item to another fund or line item belonging to or appropriated from for the same institution or board or the same state enterprise, may order a transfer of spending authority from the state contingencies appropriation, may authorize expenditure of federal funds, or in an extremity may authorize money to be drawn from the state treasury to meet the emergency until such time as the legislative assembly can make an appropriation available therefor. The term "emergency" is limited to calamities or unforeseen happenings subsequent to the time such appropriation was made and which were clearly not within the contemplation of the legislative assembly and the governor. Any transfer of spending authority from the state contingencies appropriation after the aggregate amount transferred from that appropriation during the biennium exceeds five hundred thousand dollars must be previously approved by the budget section of the legislative council. A transfer of moneys or spending authority may not be made which would eliminate or make impossible the accomplishment of a program or objective funded by the legislative assembly unless the transfer has been previously approved by the budget section of the legislative council.

<sup>243</sup> **SECTION 6. AMENDMENT.** Section 54-16-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-04.1.** May authorize acceptance and disbursement of certain moneys federal funds. The emergency commission with the advice and counsel of the executive office of the budget may authorize the state treasurer to receive; ~~between legislative sessions;~~ any moneys for ~~new programs or continuation of existing programs~~ not appropriated by the legislative assembly that which are made available by ~~the any federal government; or any agency thereof; and~~ which the legislative assembly has not indicated an intent to reject. The emergency commission may authorize pass-through federal funds from one state agency to another state agency. The emergency commission may authorize any state ~~agency, department, board, or institution~~ officer to expend such moneys from the date such moneys become available until July first June thirtieth following the next regular legislative session; provided such. The expenditures must be consistent with state law and with the terms of the grant; and ~~provided, further, that~~ the program may not commit the legislative assembly for matching funds ~~for in the future bienniums~~ unless the program has first been approved by the legislative assembly. ~~No department, institution, or agency~~ A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter.

<sup>244</sup> **SECTION 7. AMENDMENT.** Section 54-16-04.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>243</sup> Section 54-16-04.1 was also amended by section 3 of Senate Bill No. 2288, chapter 508.

<sup>244</sup> Section 54-16-04.2 was also amended by section 4 of Senate Bill No. 2288, chapter 508, and section 11 of Senate Bill No. 2015, chapter 37.



**54-16-04.2.** Commission may authorize acceptance and expenditure of moneys ~~between sessions.~~ The emergency commission, upon the advice of the office of management and budget and within the limits of legislative appropriation for approval under this section, may authorize a state agencies, institutions, or departments, between legislative sessions, officer to receive and accept moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program. The emergency commission may authorize the state ~~agency, institution, or department officer~~ to expend money received under this section from the date the money becomes available until June thirtieth following the next regular legislative session.

**SECTION 8. AMENDMENT.** Section 54-16-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-05.** Penalty for expending more than appropriated. Any state ~~official, or member of any state board, or the head of any state institution or state department officer~~ who violates any of the provisions of section 54-16-03 is guilty of a class B misdemeanor.

**SECTION 9. AMENDMENT.** Section 54-16-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-08.** ~~State contingency fund contingencies appropriation. There must be maintained in the office of the state treasurer a fund to be known as the state contingency fund, consisting of such moneys as may be appropriated thereto by the legislative assembly. The legislative assembly may appropriate moneys to the office of management and budget shall prepare, and the state auditor shall sign, warrants upon such fund at the direction of the emergency commission for state contingencies as provided in this chapter.~~

**SECTION 10. AMENDMENT.** Section 54-16-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-09.** ~~Warrant on contingency fund - Requirements before drawn~~ Transfer of spending authority from state contingencies appropriation. ~~The state If the emergency commission; before directing the office of management and budget to prepare any warrants upon the state contingency fund; shall require the department or institution for whose benefit such warrant is issued to file with the commission and with the office of management and budget a written and itemized statement of the material, services, purposes, or other considerations for which the warrant is required and the necessity therefor orders a transfer of spending authority from the state contingencies appropriation, the amount ordered must be deducted from the state contingencies line item in the appropriation to the office of management and budget and added to the appropriate line item in the appropriation of the state officer who requested the transfer. The emergency commission shall certify that the material, services, or purposes; or other considerations therein named for which the authority was transferred are necessary and proper materials to be paid from such fund, expenditures and, if an appropriation for such that purpose was made by the legislative assembly, that the appropriation for such that purpose is insufficient. The office of management and budget and the emergency commission shall file such statement and the certificate as authority for issuing the warrant therein directed a transfer under this section.~~

**SECTION 11. AMENDMENT.** Section 54-16-10 of the North Dakota Century Code is amended and reenacted as follows:

54-16-10. Departmental emergency funds - Penalty. ~~No moneys~~ Moneys appropriated by the legislative assembly to be used for emergency purposes by any ~~state department, state officer, employee, board, commission, bureau, or institution, including the Bank of North Dakota, mill and elevator association, fire and tornado, and bonding departments, and the workers compensation bureau;~~ may ~~not~~ be expended until such moneys ~~so appropriated, or so much thereof~~ as may be necessary for such ~~appropriation~~; have been transferred to the subdivision of the regular appropriation in which the emergency exists. ~~No such~~ A transfer of emergency funds; ~~hereinbefore referred to;~~ may ~~not~~ be made until an itemized, verified petition; ~~setting forth the facts by virtue of which such~~ establishing that an emergency exists and the necessity for such ~~expenditure~~ the transfer has been presented to the ~~state emergency commission;~~ by the ~~department, state officer, board, commission, bureau, or institution~~ desiring such ~~the~~ transfer, and has been approved in writing by a majority of ~~such~~ the commission. Any person who violates the ~~provisions of this section is guilty of a class A misdemeanor.~~

SECTION 12. AMENDMENT. Section 54-16-11 of the North Dakota Century Code is amended and reenacted as follows:

54-16-11. ~~Duty of emergency commission~~ Departmental emergency fund consideration. The state emergency commission, ~~upon as soon as possible after~~ presentation of the verified petition ~~provided for in~~ under section 54-16-10, ~~as soon thereafter as possible;~~ shall meet and determine the question of the existence of the emergency and the necessity for the transfer of ~~such~~ emergency funds, and shall promptly approve or reject ~~such applications~~ the petition.

SECTION 13. AMENDMENT. Section 54-16-11.1 of the North Dakota Century Code is amended and reenacted as follows:

54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies. Upon presentation of the verified petition ~~provided for in~~ under section 54-16-10, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and revenue receipts for ~~intergovernmental service agencies.~~ Such agencies are limited to the information services division, central duplicating, surplus property, roughrider industries division of the department of corrections and rehabilitation, and or central microfilm.

SECTION 14. AMENDMENT. Section 54-16-12 of the North Dakota Century Code is amended and reenacted as follows:

54-16-12. ~~Grants to board~~ Board of higher education land acquisition approval. ~~Whenever it is made to appear to the satisfaction of the state emergency commission upon application by the board of higher education that real property is available in close proximity to one of the state institutions of higher education, the~~ The emergency commission may approve the acquisition of such property near one of the state institutions of higher education, and if requested and found necessary may make funds available from the state ~~contingency fund~~ contingencies appropriation to the board of higher education for the purpose of acquiring ~~such the~~ property if the ~~following shall appear~~ emergency commission finds that:

1. The property is needed for expansion in the foreseeable future;
2. The property in all probability will not again be offered for sale at a similar price in the foreseeable future; and

3. The legislative assembly has not previously rejected a similar request, and the time during which ~~such~~ the purchase must be consummated does not permit ~~the~~ obtaining of a legislative appropriation.

~~The provisions of this chapter govern the granting of funds under this section wherever consistent with this section, but a determination of~~ Determination that an existing emergency shall exists is not be a condition precedent to the approval of ~~such a purchase or the approval of a grant of funds from the contingency fund for the purchase of such real property except as is provided in~~ state contingencies appropriation under this section.

Approved March 1, 1995

Filed March 1, 1995

## CHAPTER 508

### SENATE BILL NO. 2288

(Senators Streibel, G. Nelson, Wogsland)  
(Representatives Dalrymple, Dorso, Kaldor)

## EMERGENCY COMMISSION MEMBERSHIP AND AUTHORITY

AN ACT to amend and reenact sections 54-16-01, 54-16-04, 54-16-04.1, and 54-16-04.2 of the North Dakota Century Code, relating to emergency commission membership and authority to authorize line item transfers and expenditures of gifts, grants, and federal funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>245</sup> SECTION 1. AMENDMENT. Section 54-16-01 of the North Dakota Century Code is amended and reenacted as follows:

54-16-01. Emergency commission - Members - Organization - Quorum - Meetings - Duties. The emergency commission ~~shall consist~~ consists of the governor, the ~~commissioner of agriculture chairman~~ chairman of the legislative council, and the secretary of state, ~~except when the membership is expanded as herein provided. Whenever, during the biennium, an allocation or allocations out of the state contingency fund; a transfer of money between funds and line items; or an approval to spend federal funds in excess of ten thousand dollars is to be made to any institution or department of government; and the chairman chairmen of the senate appropriations committee and the chairman of the and house of representatives appropriations committee must be members of the commission committees. The aggregate total of transfers from the state contingency fund, within the limits of legislative appropriations, can exceed five hundred thousand dollars only to the extent that requests for transfers from the state contingency fund have been approved by the budget section of the legislative council. If the chairman of either an appropriations committee should die or resign ceases to be a member of the legislative assembly, the vice chairman of that committee shall become a member of succeeds to that position on the commission. A An appropriations committee vice chairman may also serve in the place of the appropriations committee chairman as a member of the commission at the request of the appropriate appropriations committee chairman, if the appropriations committee chairman is unable to attend a particular commission meeting. Two Four members of the commission constitute a quorum, except when the membership is expanded, in which case four members constitute a quorum. The governor must be is the chairman of the commission, and the secretary of state must be is the secretary of the commission. The commission shall meet upon at the call of the chairman. The commission shall exercise the powers and perform the duties imposed upon it by law.~~

<sup>245</sup> Section 54-16-01 was also amended by section 2 of Senate Bill No. 2032, chapter 507.

<sup>246</sup> **SECTION 2. AMENDMENT.** Section 54-16-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-04. May order transfer of moneys between funds - Line item transfers -** Order may draw from state treasury. Whenever it is made to appear A state officer may present to the emergency commission by an itemized, verified petition of any board, commission, or officer authorized to expend public funds; and after receiving requesting approval of a transfer of spending authority from the state contingencies appropriation, a transfer of money or spending authority between funds or line items, or expenditure of federal funds. The emergency commission shall request and receive information from the director of the office of management and budget; regarding the petition. If the emergency commission finds that an emergency exists, the emergency commission shall assume that an emergency exists and may order money or spending authority transferred from one fund or line item to another fund or line item belonging to or appropriated from for the same institution or board or the same state enterprise, may order a transfer of spending authority from the state contingencies appropriation, may authorize expenditure of federal funds, or in an extremity may authorize money to be drawn from the state treasury to meet the emergency until such time as the legislative assembly can make an appropriation available therefor. The term "emergency" is limited to calamities or unforeseen happenings subsequent to the time such appropriation was made and which were clearly not within the contemplation of the legislative assembly and the governor. The following transfers may not be authorized by the emergency commission without approval by the budget section of the legislative council.

1. A transfer of spending authority from the state contingencies appropriation after the aggregate amount transferred from that appropriation during the biennium exceeds five hundred thousand dollars.
2. A transfer of moneys or spending authority which would eliminate or make impossible the accomplishment of a program or objective funded by the legislative assembly.
3. A transfer exceeding fifty thousand dollars from one fund or line item to another fund or line item, unless the transfer is necessary to comply with a court order or to avoid:
  - a. An imminent threat to the safety of people or property due to a natural disaster or war crisis; or
  - b. An imminent financial loss to the state.

<sup>247</sup> **SECTION 3. AMENDMENT.** Section 54-16-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-04.1. May authorize acceptance and disbursement of certain moneys federal funds.** The emergency commission with the advice and counsel of the

<sup>246</sup> Section 54-16-04 was also amended by section 5 of Senate Bill No. 2032, chapter 507, and section 40 of Senate Bill No. 2070, chapter 54.

<sup>247</sup> Section 54-16-04.1 was also amended by section 6 of Senate Bill No. 2032, chapter 507.

executive office of the budget may authorize the state treasurer to receive, ~~between legislative sessions, any moneys for new programs or continuation of existing programs~~ not appropriated by the legislative assembly ~~that which~~ are made available by the any federal government, or any agency thereof, and which the legislative assembly has not indicated an intent to reject. The emergency commission may authorize pass-through federal funds from one state agency to another state agency. The emergency commission, with approval of the budget section of the legislative council, may authorize any state ~~agency, department, board, or institution~~ officer to expend ~~such federal~~ moneys from the date such moneys become available until July first June thirtieth following the next regular legislative session; provided such. The expenditures must be consistent with state law and with the terms of the grant; and ~~provided, further, that~~ the program may not commit the legislative assembly for matching funds ~~for in the future bienniums~~ unless the program has first been approved by the legislative assembly. ~~No department, institution, or agency~~ A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

<sup>248</sup> SECTION 4. AMENDMENT. Section 54-16-04.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-16-04.2.** Commission may authorize acceptance and expenditure of moneys ~~between sessions.~~ The emergency commission, upon the advice of the office of management and budget, with approval of the budget section of the legislative council, and within the limits of legislative appropriation for approval under this section, may authorize a state ~~agencies, institutions, or departments, between legislative sessions,~~ officer to receive ~~and accept~~ moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program. The emergency commission may authorize the state ~~agency, institution, or department~~ officer to expend money received under this section from the date the money becomes available until June thirtieth following the next regular legislative session.

Approved April 11, 1995  
Filed April 12, 1995

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<sup>248</sup> Section 54-16-04.2 was also amended by section 7 of Senate Bill No. 2032, chapter 507, and section 11 of Senate Bill No. 2015, chapter 37.

## CHAPTER 509

### HOUSE BILL NO. 1078

(Political Subdivisions Committee)

(At the request of the State Housing Finance Agency)

## HOUSING FINANCE AGENCY PROGRAM AND BONDS

AN ACT to create and enact a new subsection to section 54-17-07.2 and a new section to chapter 54-17 of the North Dakota Century Code, relating to housing finance program definitions and pledges; to amend and reenact subsection 1 of section 54-17-07.3 and section 54-17-07.4, relating to home mortgage finance programs and housing revenue bonds; and to provide for retroactive application.

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

**SECTION 1.** A new subsection to section 54-17-07.2 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

"Single family residential dwelling unit" means any residential real property that:

- a. Is designed for occupancy by one to four individual households;
- b. Is an individual condominium or equity cooperative unit; or
- c. Is an individual nonrental dwelling unit the ownership of which includes rights of facilities in common.

**SECTION 2. AMENDMENT.** Subsection 1 of section 54-17-07.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Home mortgage finance program. A program or programs to provide financing or refinancing of loans made by lenders to persons or families of low and moderate income for the purchase or substantial rehabilitation of owner occupied, single family residential dwelling units, which includes mobile homes and manufactured housing.

**SECTION 3. AMENDMENT.** Section 54-17-07.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-07.4. Housing revenue bonds.** In order to fund its housing finance programs, the industrial commission is authorized to issue and refund revenue bonds or evidences of debt and indebtedness of the state. The principal of and interest on such bonds are payable only from revenues generated under the applicable housing finance programs. The bonds may not constitute a debt of the state of North Dakota and must contain a statement to that effect on their face. The bonds may be sold at public or private sale, must mature not more than fifty years from their date or dates, and must contain such terms and provisions as the commission shall determine. The commission may capitalize from bond proceeds all expenses incidental to the issuance of the bonds or to the applicable housing finance program, including, without limitation, any reserves for the payment of the bonds. ~~All revenue~~

bonds issued by the commission to fund a housing finance program must be secured separately from revenue bonds issued to fund its other housing finance programs.

SECTION 4. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Pledges. Any pledge made by the industrial commission acting in its capacity as the state housing finance agency is valid and binding from the time the pledge is made. The money and property pledged and received by the industrial commission acting in its capacity as the state housing finance agency, except for general agency money or property, is immediately subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the industrial commission acting in its capacity as the state housing finance agency, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded to constitute constructive notice of the existence of the pledge.

SECTION 5. RETROACTIVE APPLICATION. Section 4 of this Act applies retroactively to all pledges made by the industrial commission acting in its capacity as the state housing finance agency.

Approved March 6, 1995

Filed March 7, 1995



**CHAPTER 510****SENATE BILL NO. 2165**

(Natural Resources Committee)

(At the request of the North Dakota Geological Survey)

**GLOBAL POSITIONING SYSTEM**

AN ACT to create and enact a new subsection to section 54-17.4-02 and a new section to chapter 54-17.4 of the North Dakota Century Code, relating to the responsibilities of the state geologist and collection of fees from operation of the global positioning system; and to provide a continuing appropriation.

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

**SECTION 1.** A new subsection to section 54-17.4-02 of the North Dakota Century Code is created and enacted as follows:

Cooperate with other agencies in maintaining a global positioning system community-base station and make data gathered by the station available to the public.

**SECTION 2.** A new section to chapter 54-17.4 of the North Dakota Century Code is created and enacted as follows:

**State geologist - Collection of global positioning system data - Fee.** All moneys collected for the sale of global positioning system community-base station data must be deposited in the global positioning system community-base station fund. This fund must be maintained as a revolving fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of paying the state geologist's cost of collecting and distributing the data. This fund is not subject to section 54-44.1-11.

Approved March 1, 1995

Filed March 1, 1995

**CHAPTER 511****SENATE BILL NO. 2137**

(Senator Holmberg)

(At the request of the Department of Transportation)

**STATE MILL LAND TRANSFER**

AN ACT to authorize the North Dakota mill and elevator association to convey certain state-owned land to the department of transportation.

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

**SECTION 1.** Conveyance of land by the North Dakota mill and elevator association to the department of transportation authorized.

1. The North Dakota mill and elevator association may convey to the department of transportation land owned by the state under the jurisdiction of the North Dakota mill and elevator association and described as follows:

All that part of the north half of the southwest quarter of section thirty-three, township one hundred fifty-two north, of range fifty west in Grand Forks County, North Dakota, described as follows:

Lot two, block one, State Mill Second Addition to the city of Grand Forks, North Dakota.

2. The department of transportation shall purchase the North Dakota mill and elevator land at appraised value.
3. The conveyance authorized by this Act is not subject to sections 54-01-05.2 and 54-01-05.5.
4. The attorney general shall review and approve as to form and legality all legal documents, papers, and instruments required for the conveyance authorized by this Act.

Approved March 15, 1995

Filed March 15, 1995

## CHAPTER 512

## HOUSE BILL NO. 1423

(Representatives Grosz, Belter, Poolman)  
(Senators Freborg, Grindberg)

## APPOINTMENT OF CERTAIN EXECUTIVE BRANCH OFFICERS

AN ACT to amend and reenact sections 54-23.3-03, 54-44.1-02, 54-44.2-01, 54-44.3-11, and 54-44.5-02 of the North Dakota Century Code, relating to the appointment of the director of the department of corrections and rehabilitation, the executive budget analyst, the director of the information services division, the director of the central personnel division, and the director of the office of intergovernmental assistance.

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

**SECTION 1. AMENDMENT.** Section 54-23.3-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-23.3-03. Director - Appointment - Qualifications - Compensation.** The chief administrative officer of the department is the director of the department of corrections and rehabilitation, who must be appointed by the governor. The position of director is not a classified position and the director shall serve at the pleasure of the governor. The person appointed as director must hold at least a bachelor's degree from an accredited college or university and must have held a management position in correctional or related work for at least five years. The governor shall set the salary of the director ~~will be set by the governor~~ within the limits of legislative appropriations ~~and within the salary range of the classified position as established by the central personnel division for the position.~~

**SECTION 2. AMENDMENT.** Section 54-44.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-02. Office of the budget - Director - Employees - Powers.** The office of the budget is hereby established in the office of management and budget, for the purpose of promoting economy and efficiency in the fiscal management of the state government. The director of the office of management and budget is ex officio director of the budget.

The director of the budget shall appoint a budget analyst who ~~shall~~ must hold a baccalaureate degree from a recognized institution of higher learning and ~~such~~ the appointment must be based upon the qualifications of eligible persons; ~~without reference to partisan politics. Special consideration must be given to persons who hold a degree in law, political science, business administration, or a combination thereof and who are experienced in governmental processes.~~ The position of budget analyst is not a classified position and the budget analyst shall serve at the pleasure of the director of the budget. The budget director shall employ such other professional, technical, and clerical personnel as he may deem the director deems necessary to carry out the duties prescribed in this chapter and shall fix the salary of all employees within the office of the budget and within the limits of the legislative appropriations. All personnel within the office of the budget must be

allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

**SECTION 3. AMENDMENT.** Section 54-44.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.2-01. Information services division - Creation.** The information services division is established in the office of management and budget. The director of the office of management and budget shall appoint a director of the information services division. The director of the information services division shall supervise and regulate electronic data processing activities of all executive branch state agencies, institutions, departments, and boards, except the job service North Dakota and the office of the adjutant general. The division shall establish an electronic data processing center which must, unless excepted by the director, be used by all executive branch state agencies, departments, and institutions except the institutions under the control of the board of higher education, the job service North Dakota, and the office of the adjutant general. The division shall provide data processing services to the legislative and judicial branches of government. If the division is unable to fulfill a request for service from the legislative or judicial branch of government, the service may be procured by the legislative or judicial branch within the limits of legislative appropriations.

The director of the information services division must be appointed upon the basis of education, experience, and other qualifications in data processing and administration; ~~without reference to partisan politics, and.~~ The position of director is not a classified position and the director must serve at the pleasure of the director of the office of management and budget. The director of the information services division shall employ such other professional, technical, and clerical personnel as the director determines to be necessary to carry out the duties prescribed in this chapter and shall, within the limits of the legislative appropriation, fix the salaries of all employees within the division. All personnel within the division must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

**SECTION 4. AMENDMENT.** Section 54-44.3-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.3-11. Central personnel division - Director - Appointment - Removal.** There is ~~hereby~~ created a central personnel division within the office of management and budget under the supervision and control of a director who is responsible for the performance and exercise of the duties, functions, and powers imposed upon the division.

1. The director must be experienced in the field of personnel administration and shall hold considerable knowledge of merit principles, goals, and their methods of operation.
2. The director of the office of management and budget shall appoint the director ~~from among persons certified by the board as eligible for appointment in accordance with rules which the board shall make, promulgate, and from time to time amend.~~ The person appointed may hold no other public office or employment.
3. The position of director is not a classified position and the director shall serve at the pleasure of the director of the office of management and budget may remove the director for cause, but before taking such action;

the director of the office of management and budget shall first give to the director a statement in writing of the intention to effect the director's removal and the reason therefor. Not later than the fifth day after receipt of such statement in writing, the director may appeal in writing to the board for a hearing. Not later than the tenth day after the hearing, the board shall render its decision on the removal of the director, which is final.

**SECTION 5. AMENDMENT.** Section 54-44.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.5-02. Office of intergovernmental assistance - Creation.** The office of intergovernmental assistance is hereby established in the office of management and budget; ~~for the purpose of providing to provide~~ technical assistance to local governments, state agencies, and the executive branch in the area of community and rural planning and development, policy research and development, and grant program implementation. The director of the office of management and budget shall appoint a director of the office: ~~The director must be appointed~~ upon the basis of education and experience; ~~and. The position of director is not a classified position and the director~~ shall serve at the pleasure of the director of the office of management and budget. The director of the office may employ such other professional, technical, and clerical persons as may be necessary and may fix their compensation within the limits of legislative appropriation. All personnel within the office must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

Approved April 11, 1995

Filed April 12, 1995

**CHAPTER 513****HOUSE BILL NO. 1109**

(Representative Wentz)

(Senator Nalewaja)

(At the request of the Department of Corrections and  
Rehabilitation)**CRIME VICTIMS COMPENSATION NAME CHANGE**

AN ACT to change crime victims reparations to crime victims compensation; and to amend and reenact section 54-23.4-05 of the North Dakota Century Code, relating to the restitution and gift fund.

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

**SECTION 1. AMENDMENT.** Section 54-23.4-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-23.4-05. ~~Gifts~~ Restitution funds, gifts, grants, and bequests - ~~Gift~~ Restitution and gift fund.** The division may accept on behalf of the state all restitution funds, gifts, grants, or bequests of property tendered to the state for any purpose pertaining to the activities of the division in implementing this chapter. The crime victims restitution and gift fund is established as a special fund in the state treasury. All restitution funds, gifts, grants, and bequests of property or money, and any interest occurring thereon, must be placed in the crime victims restitution and gift fund. Subject to legislative appropriation, the fund may be used and disbursed by the division in accordance with the terms of the payment or donation or, if there are no terms, for costs and expenses incurred by the division in the implementation of this chapter.

**SECTION 2. STATUTORY REFERENCES RELATING TO CRIME VICTIMS REPARATIONS.** The legislative council may insert appropriate references in chapter 54-23.4 to change the phrase "crime victims reparations" to "crime victims compensation". References inserted may be adjusted to suit the context and grammar of the sections and must be inserted so as to harmonize existing law with regard to changing crime victims reparations to crime victims compensation.

**SECTION 3. MEASURES ENACTED BY THE FIFTY-FOURTH LEGISLATIVE ASSEMBLY RELATING TO CRIME VICTIMS COMPENSATION.** The legislative council may insert appropriate references in any measure enacted by the fifty-fourth legislative assembly which refers to the phrase "crime victims reparations" consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name change provided by this Act.

Approved March 7, 1995

Filed March 8, 1995

**CHAPTER 514****SENATE BILL NO. 2199**

(Finance and Taxation Committee)

(At the request of the State Treasurer)

**STATE TREASURER'S UNPAID CHECKS**

AN ACT to amend and reenact section 54-27-15.1 of the North Dakota Century Code, relating to unpaid state treasurer's checks.

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

**SECTION 1. AMENDMENT.** Section 54-27-15.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-27-15.1.** State treasurer's checks, warrants, and warrant-checks - Cancellation - Deposit to common schools trust fund - Subsequent payment - Continuing appropriation. The state treasurer, at the beginning of each fiscal year, shall prepare a list of the checks, warrants, and warrant-checks drawn on various depositories which are more than three years old which remain outstanding and unpaid and shall show the number, date, payee (with address of payee if available), amount, ~~bank on which drawn,~~ and fund (if available) against which said instrument was drawn. A copy of such list must then be used as an authority for writing a receipt of the total of such check or checks and shall credit such amount to the common schools trust fund pursuant to chapter 47-30.1. One copy of such receipt with list of instruments affected must be provided to the administrator of unclaimed properties. In the event such check, warrant, or warrant-check is at any subsequent time presented for payment, or a claim is made by any person for the amount of any such instrument, further proceedings must be conducted in accordance with chapter 47-30.1. These expenditures are hereby subject to a standing and continuing appropriation.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 515****HOUSE BILL NO. 1054**

(Legislative Council)  
(Interim Legislative Audit and Fiscal Review Committee)  
(Representatives Dorso, Wald)

**LEASE DOCUMENTATION BY STATE AGENCIES**

**AN ACT** to require every state agency and institution to prepare a written analysis documenting the decision to acquire the use of any asset as the result of a lease; and to create and enact a new subsection to section 54-44.1-06 of the North Dakota Century Code, relating to the contents of budget data prepared by the director of the budget.

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

**SECTION 1. Documentation of asset acquisitions.** Any state agency or institution that acquires the use of an asset as the result of a lease arrangement shall prepare a written analysis documenting the decision to acquire the use of the asset. The agency or institution shall make the analysis available to the auditor for review during the audit for the fiscal period during which the decision was made.

**SECTION 2.** A new subsection to section 54-44.1-06 of the North Dakota Century Code is created and enacted as follows:

A list of every individual leased asset, excluding real estate, with a value of at least fifty thousand dollars and every group of leased assets comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement by a state agency or institution. The list must include leased assets acquired in the current biennium and anticipated leased assets in the next biennium.

Approved March 24, 1995  
Filed March 27, 1995



**CHAPTER 516**

**SENATE BILL NO. 2139**

(Senator Wanzek)

(At the request of the Governor)

**GORDON AAMOTH INDIAN DEVELOPMENT FUND  
ELIMINATED**

AN ACT to repeal chapter 54-34.2 of the North Dakota Century Code, relating to the Gordon Aamoth Indian development fund.

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

**SECTION 1. REPEAL.** Chapter 54-34.2 of the North Dakota Century Code is repealed.

Approved March 7, 1995

Filed March 7, 1995

## CHAPTER 517

## HOUSE BILL NO. 1023

(Legislative Council)

(Interim Administrative Rules Committee)

(Representatives Freier, Gorman, Wilkie, Kretschmar)

(Senators Tennesos, Nalewaja)

## ADMINISTRATIVE RULES COMMITTEE DUTIES

AN ACT to amend and reenact section 54-35-02.6 of the North Dakota Century Code, relating to the duties of the administrative rules committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.6 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.6. Rules referred to interim reviewed by committee on administrative rules - Committee responsibility. The chairman of the legislative council may assign proposed and existing rules and regulations of administrative agencies, as defined by section 28-32-01, committee on administrative rules shall review administrative rules adopted under chapter 28-32. The committee shall consider oral and written complaints comments received concerning such administrative rules to the committee. The committee shall study and review assigned administrative rules and related statutes to determine whether:

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

The committee may make rule change recommendations to the adopting agency and may make recommendations to the legislative council for the amendment or repeal of enabling legislation serving as authority for statutes relating to administrative rules. The committee's failure to review proposed rules prior to publication in the North Dakota Administrative Code does not prevent rules from taking effect. Except for objections pursuant to section 28-32-03.3, the recommendations or opinions of the committee do not affect the legality of any rule as determined by the attorney general.

Approved March 14, 1995  
Filed March 14, 1995

**CHAPTER 518****SENATE BILL NO. 2260**

(Senators Mathern, G. Nelson, Mushik)  
(Representatives Rydell, Kelsch, Oban)

**LEGISLATIVE ETHICS COMMITTEE**

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the establishment of a legislative ethics committee.

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

**SECTION 1.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

**Legislative ethics committee.** The legislative council, during each biennium, shall appoint an ethics committee to consider or prepare a legislative code of ethics. The committee may recommend legislation relating to legislative ethics. The committee shall operate according to the laws and procedures governing the operation of other legislative council interim committees.

Approved March 7, 1995

Filed March 7, 1995

**CHAPTER 519****SENATE BILL NO. 2395**

(Senators W. Stenehjem, G. Nelson, Nething)  
(Representatives Dorso, Kretschmar)

**LEGISLATIVE BRANCH LEGAL COUNSEL**

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to authority of the legislative council to appoint or retain legal counsel to protect the interests of the legislative branch in actions and proceedings.

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

<sup>249</sup> **SECTION 1.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

**Retention of legal counsel.** When the legislative assembly is in session, either house by resolution may authorize, or both houses by concurrent resolution may direct, the legislative council to appoint or retain legal counsel to appear in, commence, prosecute, defend, or intervene in any action, suit, matter, cause, or proceeding in any court or agency when deemed necessary or advisable to protect the official interests of the legislative branch. When the legislative assembly is not in session, the legislative council, by a two-thirds vote, may appoint or retain legal counsel to appear in, commence, prosecute, defend, or intervene in any action, suit, matter, cause, or proceeding in any court or agency when deemed necessary or advisable to protect the official interests of the legislative branch. Section 54-12-08 does not apply to a person appointed or retained under this section.

Approved March 27, 1995

Filed March 28, 1995

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<sup>249</sup> Section 1 of this Act was also amended by section 3 of House Bill No. 1001, chapter 1.

**CHAPTER 520****SENATE BILL NO. 2304**

(Senators Yockim, Kelsh, Krauter, LaFountain, O'Connell, Tomac)

**LEGISLATOR TELEPHONE RECORDS ACCESS STUDY**

AN ACT to provide for a legislative council study of access to certain telecommunications records.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY OF ACCESS TO TELECOMMUNICATIONS RECORDS.** The legislative council shall direct the legislative ethics committee to study during the 1995-96 interim access to telecommunications records of legislators and other public officials. The study must include consideration of the protection of constituent identities in sensitive communications and the public's right to have access to information concerning the activities of elected officials.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 521****SENATE BILL NO. 2180**

(Appropriations Committee)

(At the request of the Office of Management and Budget)

**STUDENT LOAN DEFAULT REIMBURSEMENT**

AN ACT to create and enact a new section to chapter 54-44 of the North Dakota Century Code, relating to authority of the office of management and budget to seek reimbursement for assessments by the United States department of education for default costs on student loans from institutions of higher education.

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

**SECTION 1.** A new section to chapter 54-44 of the North Dakota Century Code is created and enacted as follows:

**Reimbursement from institutions of higher education for state's share of default costs.**

1. If the state is required to pay a fee to the United States secretary of education to offset the secretary's default costs relating to an institution of higher education located in North Dakota with a cohort default rate exceeding twenty percent for the most recent fiscal year for which rates are calculated, the director of the office of management and budget, or the director's designee, shall:
  - a. Provide notice by certified mail to each institution of higher education in this state that participates in the federal family education loan program or the federal direct student loan program, under title IV of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1245; 20 U.S.C. 1070 et seq.] of any assessment necessary to reimburse the state for the institution's proportionate share of any fee charged to the state by the secretary of education under the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1230; 20 U.S.C. 1001 et seq.].
  - b. The amount of reimbursement due from any institution must be based upon a fee structure approved by the United States secretary of education which has been provided to the director of the office of management and budget by the student loan guarantee agency. The student loan guarantee agency shall submit the fee structure to the director of the office of management and budget prior to implementation. The fee charged must be determined based upon the fee structure established by the student loan guarantee agency and must be based on the institution's cohort default rate and the state's risk of loss as provided by section 4201 of the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66; 107 Stat. 370; 20 U.S.C. 1078(n)].
2. The student loan guarantee agency may adopt rules to implement this section. The rules may provide for a process and standards to exempt

an institution from reimbursement or allow an adjustment of the required reimbursement if the institution demonstrates that exceptional mitigating circumstances contributed to the cohort default rate. Prior to implementing any exemption process and standards, the student loan guarantee agency shall obtain comments on the exemption process and standards from the director of the office of management and budget. Chapter 28-32 does not apply to rules adopted under this section.

3. If any institution fails to reimburse the office of management and budget within sixty days of receiving an assessment under subsection 1, the amount of the assessment plus interest on the assessment at the rate of nine percent from the date of receipt of the assessment and reasonable collection costs, including attorney's fees, constitutes a lien against all assets of the institution. The lien has priority over all other liens and encumbrances acquired after the date the institution was notified of the required reimbursement by the office of management and budget. The state may enforce any lien created under this subsection against real property in the manner provided in chapter 35-22, against personal property in the manner provided in chapter 32-20, or against the owner of any institution by garnishment in the manner provided in chapter 32-09.1, except that the restrictions of subsection 1 of section 32-09.1-03 do not apply to a garnishment commenced to collect an assessment established under this section.

Approved March 17, 1995

Filed March 20, 1995

**CHAPTER 522****SENATE BILL NO. 2373**

(Senator Mushik)  
(Representative Rydell)

**EXPENDITURE CONFORMITY WITH LEGISLATIVE  
INTENT**

AN ACT to create and enact a new section to chapter 54-44.1 of the North Dakota Century Code, relating to conformity of budget unit expenditures with legislative intent; and to amend and reenact section 54-44.1-12 of the North Dakota Century Code, relating to control over the rate of expenditures by the director of the budget.

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

**SECTION 1. AMENDMENT.** Section 54-44.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-12. Control over rate of expenditures.** The director of the budget shall exercise continual control over the execution of the budget affecting the departments and agencies of state government, with the exception of the legislative and judicial branches. Execution means the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of allotments. The allotment must be made by specific fund and all departments and agencies that receive moneys from that fund must be allotted on a uniform percentage basis. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director shall find one or more of the following circumstances to exist:

1. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
2. The payment or the obligation incurred is not authorized by law.
3. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, ~~documents, or other reliable evidence available including:~~
  - a. Statements of legislative intent expressed in enacted appropriation measures or other measures enacted by the legislative assembly; and
  - b. Statements of purpose of amendment explaining amendments to enacted appropriation measures, as recorded in the journals of the legislative assembly.
4. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the accomplishment of



the purpose of the appropriation at a lesser amount than that appropriated.

SECTION 2. A new section to chapter 54-44.1 of the North Dakota Century Code is created and enacted as follows:

Implementation of legislative intent - Legislative objection to execution of budget - Effect of objection.

1. The budget section of the legislative council may object to any allotment made under section 54-44.1-12, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the budget section deems that the allotment or expenditure or the failure to make an allotment or expenditure is contrary to legislative intent as recorded in any reliable legislative records. The budget section shall file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the budget section's reasons for the objection.
2. The office of the legislative council shall attach to each objection a certification of the time and date of the filing of the objection and, as soon as possible, shall transmit a copy of the objection and the certification to the director of the budget and the affected budget unit. The office of the legislative council shall maintain a permanent register of all objections under this section.
3. Within fourteen days after the filing of an objection, the affected budget unit shall respond in writing to the budget section. After receipt of that response, the budget section may withdraw or modify its objection.
4. After the filing of an objection, the burden of persuasion is upon the budget unit in any action for judicial review of whether the allotment or expenditure or the failure to make an allotment or expenditure is contrary to law. If the budget unit fails to meet its burden of persuasion, the court shall render judgment against the budget unit for court costs. These court costs must include reasonable attorney's fees and must be payable from the appropriation of the budget unit.

Approved March 17, 1995

Filed March 17, 1995

**CHAPTER 523****SENATE BILL NO. 2391**

(Senators Tomac, St. Aubyn)

(Representatives Byerly, Sitz)

**STATE AGENCY COMPUTER DATA ACCESS**

AN ACT to create and enact a new section to chapter 54-44.2 of the North Dakota Century Code, relating to access to computer data maintained by state agencies; and to provide for the development of a plan to implement a uniform employer reporting system between the workers compensation bureau, job service North Dakota, and the state tax commissioner.

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

**SECTION 1.** A new section to chapter 54-44.2 of the North Dakota Century Code is created and enacted as follows:

**Access to electronically stored information - Coordination by information services division.** An entity of the state may establish procedures for providing access to any computer data base or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. The entity may charge a reasonable fee for providing that access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available. The information services division shall cooperate with each state entity providing access to any computer data base or electronically filed or stored information to assist in providing economical, efficient, and compatible access.

**SECTION 2. DEVELOPMENT OF A UNIFORM EMPLOYER REPORTING SYSTEM.** The workers compensation bureau, job service North Dakota, and the state tax commissioner shall develop a plan to implement an employer reporting system to provide a single form for the submission of employer information. The workers compensation bureau is the lead agency in charge of the development of the plan. The workers compensation bureau, job service North Dakota, and the state tax commissioner shall present any legislation necessary to implement this system to the fifty-fifth legislative assembly.

Approved April 12, 1995

Filed April 13, 1995

## CHAPTER 524

### HOUSE BILL NO. 1501

(Representatives Brown, Rennerfeldt)  
(Senators Andrist, Urlacher)

## STATE PERSONNEL BOARD COMPOSITION AND DUTIES

AN ACT to create and enact a new subsection to section 54-44.3-20 of the North Dakota Century Code, relating to exceptions from categories of positions in the state service; and to amend and reenact sections 54-44.3-03, 54-44.3-07, and 54-44.3-12.2 of the North Dakota Century Code, relating to the composition and duties of the state personnel board and appeal procedures for state employee complaints.

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

**SECTION 1. AMENDMENT.** Section 54-44.3-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-44.3-03. State personnel board - Composition - Terms - Vacancies - Qualifications.**

1. ~~Effective July 1, 1975, there is hereby created a five-member~~ The state personnel board: ~~The board must be is composed of a constitutionally elected official the director, who must be the chairman of the board; a member appointed by the board of higher education; one member appointed by the governor; and two members elected by employees classified under sections 54-44.3-19 and 54-44.3-20. The constitutionally elected officials shall meet at the call of the governor within ten days after July 1, 1977, and thereafter at the expiration of the term of the constitutionally elected member and select by a majority vote the constitutionally elected official who shall serve on the board.~~
2. The term of the member of the board appointed by the governor and the respective terms of the members of the board elected by classified employees must be for six years. ~~The constitutionally elected official's term of office must be for four years or the remainder of the official's term of office, whichever is shorter. However, for the initial composition of the board, the following procedures apply:~~
  - a. ~~The member of the board first appointed by the governor in 1995 shall serve for a period of two six years.~~
  - b. ~~One of the two members of the board elected by classified employees shall first serve a term of two years.~~
  - c. ~~One of the two members of the board elected by classified employees shall first serve a term of five years.~~

Thereafter, all appointments and elections to the personnel board ~~will~~ must be for six years' duration.

3. Any permanent vacancy in office must be filled for the unexpired term in the same manner as the selection of the person vacating the office. However, if a board member voluntarily withdraws from deliberation and voting on an appeal where there may be a possible conflict of interest, the vacancy will be filled temporarily in the same manner as the selection of the person vacating the office. When a temporary vacancy involves a member of the board elected by classified employees, the automatic substitute must be the candidate that received the second highest number of votes in the election that elected the board member. Temporary board members will be used only in situations when a permanent board member voluntarily vacates the position due to a possible conflict of interest.
4. The member of the board appointed by the governor must be a resident of the state for at least sixty days, and must be known to be in sympathy with the application of merit principles to public employment. Each member of the board elected by classified employees must be a resident of the state for at least sixty days, and must be known to be in sympathy with the application of merit principles to public employment. No member of the board appointed by the governor or elected by classified employees may have held a position in a political party within four years immediately preceding the member's appointment or election to the board, and those members of the board elected by classified employees must be full-time employees in good standing of the classified service.

<sup>250</sup> **SECTION 2. AMENDMENT.** Section 54-44.3-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-44.3-07. Duties of board.** The primary responsibility of the board is to foster and assure a system of personnel administration in the classified service of state government. In carrying out this function it shall:

1. Promulgate such rules and hold such hearings as are necessary to properly perform the duties, functions, and powers imposed on or vested in it by law. The promulgation of rules must be accomplished in accordance with ~~provisions of~~ chapter 28-32.
2. ~~Review and hear comments from any concerned individuals, departments, agencies, or their representatives, on any rules or modifications thereof adopted by the personnel division. Such a rule or modification will be effective upon implementation by the division; however, if the board finds that the rule constitutes poor administrative practice, is arbitrary, capricious, contrary to the spirit or intent of the personnel system, or otherwise contrary to law, it may disapprove the rule or modification on that basis, thus repealing the concerned rule or modification.~~
3. Hear, consider, and determine appeals by nonprobationary employees in the classified service ~~from agency grievance procedures under section 54-44.3-12.2~~ related to position classifications; and pay grade

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<sup>250</sup> Section 54-44.3-07 was also amended by section 50 of House Bill No. 1026, chapter 350.

assignments; merit system qualification; discrimination; reprisals; reduction in force; forced relocation; demotion with loss of pay; suspension without pay; and dismissal. The board may assign the initial hearing of an appeal to an administrative hearing officer for the receipt of evidence and the preparation of findings of fact, conclusions of law, and a recommended decision under chapter 28-32. The board's decision on an appeal shall resolve the issues presented between the employer and employee; and the board may order any needed remedy, including affirming, modifying, or reversing the employer's decision; vacating suspensions; directing back pay and adjustments to back pay; and reinstatement to the classified service.

- 4- 3. Submit a biennial report as prescribed by section 54-06-04 of its activities and the operation of this state's personnel system.
- 5- 4. Keep such minutes and maintain such records as are necessary to assure the equitable administration of this chapter.

**SECTION 3. AMENDMENT.** Section 54-44.3-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals.** It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees. To ensure this the state desires to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service related to discrimination. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an administrative hearing officer to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the office of administrative hearings must be filed according to chapter 28-32.

<sup>251</sup> **SECTION 4.** A new subsection to section 54-44.3-20 of the North Dakota Century Code is created and enacted as follows:

Positions referred to under law as serving at the pleasure of or at the will of the appointing authority.

Approved April 17, 1995  
Filed April 18, 1995

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<sup>251</sup> Section 54-44.3-20 was also amended by section 9 of Senate Bill No. 2181, chapter 458; section 5 of Senate Bill No. 2211, chapter 199; and section 1 of House Bill No. 1250, chapter 525.

**CHAPTER 525****HOUSE BILL NO. 1250**

(Representatives Skarphol, Keiser, Byerly, Carlson)  
(Senators Andrist, Mutch)

**WORKERS COMPENSATION BUREAU PERSONNEL  
SYSTEM**

AN ACT to create and enact a new subsection to section 54-44.3-20 and a new section to chapter 65-02 of the North Dakota Century Code, relating to excepting officers and employees of the workers compensation bureau from the central personnel system and requiring the workers compensation bureau to establish a personnel system; to provide for approval of the system; and to provide an effective date.

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

<sup>252</sup> **SECTION 1.** A new subsection to section 54-44.3-20 of the North Dakota Century Code is created and enacted as follows:

Officers and employees of the workers compensation bureau.

**SECTION 2.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Bureau to establish personnel system.** The bureau shall establish a system of personnel administration for its employees based upon principles and methods to be determined by the bureau, and governing position classification, pay administration, transfer of employees, discipline of employees, and removal of employees.

**SECTION 3. APPROVAL OF INITIAL SYSTEM.** By November 1, 1995, the bureau shall submit its personnel system established under section 2 of this Act to the personnel system review committee. The personnel system review committee consists of two legislators, one appointed by the majority leaders of the senate and the house of representatives and one appointed by the minority leaders of the senate and the house of representatives and four persons appointed by the governor who are experienced in personnel administration in the public or private sector. The committee shall review the system and may require the bureau to make any revisions the committee determines appropriate. The bureau cannot implement the system until the system is approved by the committee. The committee shall approve or disapprove the system by January 1, 1996. Subsequent to implementation of this system by the original approval committee, any needed changes or amendments must be approved by the workers' compensation advisory council. The bureau shall reimburse members of the committee for mileage and expenses at the rates provided in sections 44-08-04 and 54-06-09.

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<sup>252</sup> Section 54-44.3-20 was also amended by section 9 of Senate Bill No. 2181, chapter 458; section 4 of House Bill No. 1501, chapter 524; and section 5 of Senate Bill No. 2211, chapter 199.

**SECTION 4. EFFECTIVE DATE.** Section 1 of this Act becomes effective January 1, 1996.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 526****SENATE BILL NO. 2257**

(Senators St. Aubyn, Grindberg)  
(Representatives Delmore, Nottestad)

**COLLEGE STUDENT GOVERNMENT INTERN  
PROGRAM**

AN ACT to create and enact a new section to chapter 54-44.3 of the North Dakota Century Code, relating to establishment of a college student cooperative education or intern program for executive and legislative branch agencies.

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

**SECTION 1.** A new section to chapter 54-44.3 of the North Dakota Century Code is created and enacted as follows:

**College student cooperative education or intern program - Eligibility.** The director shall establish and administer within the executive and legislative branches of state government a program through which college students may receive stipends and academic credit for participating in a cooperative education or internship program. The program must be open to any student enrolled in a public or private educational institution in this state which has been accredited by an agency recognized by the United States department of education. The director shall establish classifications and develop uniform application procedures for the cooperative education or internship program.

Approved March 8, 1995  
Filed March 9, 1995



**CHAPTER 527****SENATE BILL NO. 2172**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

**PERS EARNINGS, DEFINITIONS, ENROLLMENT, AND CREDIT**

AN ACT to create and enact a new section to chapter 54-52 and three new subsections to section 54-52-04 of the North Dakota Century Code, relating to interest and earnings credited to funds administered by the retirement board and authority of the retirement board; and to amend and reenact section 54-52-01, subsection 1 of section 54-52-05, section 54-52-06, subsections 6 and 8 of section 54-52-17, and section 54-52-17.4 of the North Dakota Century Code, relating to definitions, enrollment of members, employer contributions, beneficiaries, and purchase of additional credit under the public employees retirement system.

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

<sup>253</sup> **SECTION 1. AMENDMENT.** Section 54-52-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-52-01. Definition of terms.** As used in this chapter, unless the context otherwise requires:

1. "Account balance" means the total contributions made by the employee, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials at their sole election; provided, that judges of the supreme and district courts eligible under section 54-52-02.3 and appointed officials eligible under section 54-52-02.5 are eligible employees and shall participate in the public employees retirement system.
4. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; certified employees of a school district means those employees

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<sup>253</sup> Section 54-52-01 was also amended by section 1 of Senate Bill No. 2174, chapter 528, and section 1 of House Bill No. 1127, chapter 529.

eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

5. "Employer" means a governmental unit.
6. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.
7. "Governmental unit" means the state of North Dakota or a county or city thereof, a school district, including the Fargo school district, or any combination thereof, a district health unit, and the Garrison Diversion Conservancy District.
8. "National guard security officer or firefighter" means a participating member who is:
  - a. A security police employee of the North Dakota air national guard and who is a member of the national guard; or
  - b. A firefighter employee of the North Dakota air national guard and who is a member of the national guard.
9. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.
10. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least five months each year.
11. "Prior service" means service or employment prior to July 1, 1966.
12. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.
13. "Public employees retirement system" means the retirement plan and program established by this chapter.
14. "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.
15. "Retirement board" or "board" means the seven persons designated by this chapter as the governing authority for the retirement system created.
16. "Seasonal employee" means a participating member who does not work twelve months a year.
- ~~17.~~ 18. "Service" means employment on or after July 1, 1966.
- ~~17.~~ 18. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

- ~~18.~~ 19. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.
19. 20. "Wages" and "salaries" means the actual dollar compensation excluding overtime paid to or for an employee for the employee's services member's earnings in eligible employment under this chapter reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

<sup>254</sup> SECTION 2. Three new subsections to section 54-52-04 of the 1993 Supplement to the North Dakota Century Code are created and enacted as follows:

The board may audit any books, papers, accounts, bills, vouchers, and other documents or property of any and all departments, boards, commissions, political subdivisions, financial institutions, contractors, health care organizations, and consultants relating to their participation in services provided to programs administered by the board.

The board shall fund the administrative expenses of chapter 54-52.2 from funds collected pursuant to chapters 54-52, 54-52.1, and 54-52.3, subject to appropriation by the legislative assembly.

Except as provided by section 54-52-17.7, the board may adjust service and make any correction of member, retiree, or beneficiary records and benefits after an error or inequity has been determined.

<sup>255</sup> SECTION 3. AMENDMENT. Subsection 1 of section 54-52-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Every eligible permanent state, county, city, or noncertified school district employee concurring in the plan shall so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility,

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<sup>254</sup> Section 54-52-04 was also amended by section 1 of House Bill No. 1126, chapter 533.

<sup>255</sup> Section 54-52-05 was also amended by section 4 of Senate Bill No. 2174, chapter 528.

unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service.

**SECTION 4. AMENDMENT.** Section 54-52-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan.** Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under subsection 3 5 of section 54-52-17.4, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to subsection 3 5 of section 54-52-17.4 a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to subsection 3 5 of section 54-52-17.4 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

<sup>256</sup> **SECTION 5. AMENDMENT.** Subsections 6 and 8 of section 54-52-17 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. If before retiring a member dies after completing five years of eligible employment, the board shall pay the member's account balance to ~~any beneficiary, other than the member's surviving spouse, designated by the member with the written consent of the member's spouse, if any.~~ However, if there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing, the board shall pay the member's account balance to the member's beneficiary or, if there is no named beneficiary, to the member's estate. If the member has not designated ~~any an alternate beneficiary, other than the member's~~

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<sup>256</sup> Section 54-52-17 was also amended by sections 1 and 2 of Senate Bill No. 2171, chapter 531, and section 1 of House Bill No. 1128, chapter 532.

~~surviving spouse under this section~~; the surviving spouse of the member may select one of the following optional forms of payment:

- a. A lump sum payment of the member's retirement account as of the date of death.
  - b. Payments for sixty months as calculated for the deceased member as if the member was age sixty-five at the date of death.
  - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a member who is receiving retirement benefits or the member's surviving spouse who is receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to such spouse, the member's surviving the named beneficiary; if any, or the member's estate of the recipient or, if there is no named beneficiary, to the recipient's estate.

<sup>257</sup> SECTION 6. AMENDMENT. Section 54-52-17.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.4. Purchase of additional credit.**

1. A ~~participating~~ member may elect to purchase credit for years of service and prior service for which the ~~participating~~ member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
  - a. Active employment in the armed forces of the United States, except as provided in subsection ~~3~~ 5, for up to four years of credit.
  - b. Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter.
  - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.

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<sup>257</sup> Section 54-52-17.4 was also amended by section 42 of Senate Bill No. 2070, chapter 54.

- e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
  - f. Employment as a permanent employee of a governmental unit not located in North Dakota; ~~except that any such years of out-of-state employment are not eligible for credit in North Dakota if the years claimed also qualify for retirement benefits from an out-of-state retirement system.~~
  - g. Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
- a. Employer-approved leave of absence or,
  - b. Months away from work while participating as a seasonal employee.
3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
- a. Except as provided in subsection 4 5, for up to four years of credit for active employment in the armed forces of the United States.
  - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
  - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges retirement system.
- 3+ 4. The ~~participating~~ member may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The ~~participating~~ member shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.
- 4+ 5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the member's most recent monthly salary, times the number of months of credit being purchased, plus interest at a rate determined by the board. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03 one percent times the member's present monthly salary times the member's

months of credit being purchased. For credit before July 1, 1966, no contribution is required.

**SECTION 7.** A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Interest and earnings attributable to administered funds. All interest and earnings on funds administered by the retirement board established under chapters 39-03.1, 54-52, 54-52.1, 54-52.2, and 54-52.3 must be credited to the respective fund.

Approved March 15, 1995

Filed March 15, 1995

## CHAPTER 528

## SENATE BILL NO. 2174

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

## PERS PARTICIPATION BY POLITICAL SUBDIVISIONS

AN ACT to amend and reenact subsection 7 of section 54-52-01, sections 54-52-02.1, 54-52-02.2, subsection 1 of section 54-52-05, sections 54-52-07, and 54-52.1-03.1 of the North Dakota Century Code, relating to the definition of governmental unit for purposes of the public employees retirement system, participation in the public employees retirement system, and participation in the uniform group insurance program.

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

<sup>258</sup> SECTION 1. AMENDMENT. Subsection 7 of section 54-52-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. "Governmental unit" means the state of North Dakota or a ~~county or city~~ political subdivision thereof; ~~a school district; including the Fargo school district; or any combination thereof; a district health unit; and the Garrison Diversion Conservancy District.~~

SECTION 2. AMENDMENT. Section 54-52-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.1. County, city, and noncertified school district employees Political subdivisions** authorized to join public employees retirement system.

1. ~~The boards of county commissioners of the several counties; the governing body of any city; a school district; a city health department providing health services in a county and city health district formed under section 23-14-01.1; or any combination thereof~~ A political subdivision may, on behalf of its permanent employees, and permanent noncertified employees only in the case of school districts, enter into agreements with the retirement board for the purpose of extending the benefits of the public employees retirement system, as provided in this chapter, to those employees. The agreement may, in accordance with this chapter, contain provisions relating to benefits, contributions, effective date, modification, administration, and other appropriate provisions as the retirement board and the ~~board of county commissioners; the governing body of a city; a school district; a city health department; or any combination thereof~~ political subdivision agree upon, but the agreement must provide that:

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<sup>258</sup> Section 54-52-01 was also amended by section 1 of Senate Bill No. 2172, chapter 527, and section 1 of House Bill No. 1127, chapter 529.



- a. ~~The county, city, school district, city health department, or any combination thereof~~ political subdivision will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06.
  - b. A portion of the moneys, paid by the ~~counties, cities, school districts, city health departments, or any combination thereof~~ political subdivision may be used to pay administrative expenses of the retirement board.
2. Notwithstanding any other provision of this chapter, no political subdivision of this state not participating in the public employees retirement system on June 30, 1977, may thereafter become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the cost of that portion of benefits to be paid by the retirement system to the employees of the political subdivision based on any prior service or on any service after June 30, 1977, and before the date of initial participation in the retirement system, or both; and the political subdivision has adopted a method, approved by the board, to pay the costs determined in this subsection over a period not to exceed twenty-five years from June 30, 1977. No political subdivision may discontinue participation in the fund without first making such payment to the fund as may be necessary for the fund to pay the future benefits of the eligible employees of the political subdivision as determined on the basis of rules adopted by the board.

**SECTION 3. AMENDMENT.** Section 54-52-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.2. Employee referendum - Authorization and supervision.** On their own motion or upon petition by twenty percent of the permanent ~~county or city~~ political subdivision employees or the permanent noncertified employees of any school district, the ~~board of county commissioners or the governing body of the city or school district~~ political subdivision shall authorize and supervise a referendum of the permanent employees employed by that ~~county or city or of the noncertified permanent employees employed by that school district or the employees of any other~~ political subdivision authorized to participate in the system political subdivision on the question whether ~~such~~ the employees elect to participate in the retirement system. If the majority of ~~such~~ the employees vote in favor of participation in the retirement system, the ~~board of county commissioners or the governing body of a city, school district, or other~~ political subdivision, notwithstanding anything to the contrary in chapter 40-46, may in its discretion enter into the agreement provided for in section 54-52-02.1. Notwithstanding provisions to the contrary in chapters 18-05, 18-11, and 40-45, the police department of any city, the fire department of any city, or both, may hold referendums among their employees on the question of whether their department should join the remaining city employees in participation in the retirement system established by this chapter. If a majority of the city police or city firemen, or both, vote in favor of such participation, the governing body of the city ~~shall~~ must include ~~such~~ the policemen and firemen within any agreement entered into pursuant to section 54-52-02.1, and ~~shall~~ must arrange for discontinuance of any existing policemen's or firemen's pension fund as provided by law.

<sup>259</sup> SECTION 4. AMENDMENT. Subsection 1 of section 54-52-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Every eligible ~~permanent state, county, city, or noncertified school district governmental unit~~ employee concurring in the plan ~~shall~~ must so state in writing and all future eligible employees are participating members.

SECTION 5. AMENDMENT. Section 54-52-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-07. Agency, county, city, or school district Governmental unit** contribution is retirement contribution. The ~~agency, county, city, or school district governmental unit~~ contribution to a retirement plan must be considered a retirement contribution and not an additional compensation. This applies specifically to elected and appointed officials whose maximum annual compensation is set by the statute or by state, county, city, or school district governing bodies, boards, or commissions. The retirement contribution may not be considered by the employee as income in computing his the employee's net income for purposes of state income tax until ~~such time as~~ the moneys come under the control of the employee.

SECTION 6. AMENDMENT. Section 54-52.1-03.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-03.1. Certain political subdivisions authorized to join uniform group insurance program - Employer contribution.** ~~The board of county commissioners of any county, the governing body of any city or school district, a district health unit, or any combination thereof, A political subdivision~~ may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to minimum requirements established by the board and a minimum period of participation of sixty months. If the ~~board of county commissioners of a participating county, the governing body of any participating city or school district, a district health unit, or any combination thereof,~~ political subdivision withdraws from participation in the uniform group insurance program, before completing sixty months of participation, ~~that entity~~ the political subdivision shall make payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the ~~entity's~~ political subdivision's employees as determined under rules adopted by the board. ~~The boards of county commissioners of participating counties and the governing bodies of participating cities or school districts, district health units, or any combinations thereof~~ political subdivision may determine the amount of the employer's monthly contribution toward the total monthly premium amount required of each eligible participating employee.

Approved March 15, 1995

Filed March 15, 1995

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<sup>259</sup> Section 54-52-05 was also amended by section 3 of Senate Bill No. 2172, chapter 527.

**CHAPTER 529****HOUSE BILL NO. 1127**

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

**NATIONAL GUARD EMPLOYEE PERS DEFINITION**

AN ACT to amend and reenact subsection 8 of section 54-52-01 of the North Dakota Century Code, relating to definitions for purposes of the public employees retirement system.

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

<sup>260</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 54-52-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. "National guard security officer or firefighter" means a participating member who is:
  - a. A security police employee of the North Dakota ~~air~~ national guard ~~and who is a member of the national guard~~; or
  - b. A firefighter employee of the North Dakota ~~air~~ national guard ~~and who is a member of the national guard~~.

Approved March 7, 1995

Filed March 7, 1995

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<sup>260</sup> Section 54-52-01 was also amended by section 1 of Senate Bill No. 2172, chapter 527, and section 1 of Senate Bill No. 2174, chapter 528.

**CHAPTER 530****HOUSE BILL NO. 1500**

(Representatives Wardner, Sabby, Kunkel)  
(Senator C. Nelson)

**INVESTMENT OF PUBLIC EMPLOYEE RETIREMENT  
FUNDS**

AN ACT to provide for the use and investment of public employee retirement funds.

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

**SECTION 1. Public employee retirement funds - Use and investment.** Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of that system, including the payment of system administrative costs.

Approved April 7, 1995

Filed April 7, 1995

**CHAPTER 531****SENATE BILL NO. 2171**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

**PERS SERVICE CREDIT, UNUSED SICK LEAVE, AND SPOUSE BENEFITS**

AN ACT to create and enact a new section to chapter 54-52 and a new subdivision to subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to purchase of service credit and conversion of unused sick leave under the public employees retirement system; and to amend and reenact subsection 6 of section 54-52-17 of the North Dakota Century Code, relating to calculation of benefits for surviving spouses under the public employees retirement system.

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

<sup>261</sup> **SECTION 1.** A new subdivision to subsection 4 of section 54-52-17 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

A participating member who is a vested permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by subdivision a of subsection 3 of this section. The years of service purchased must be added to the years of service employment under paragraph 1 of subdivision a of this subsection for calculating the service benefit.

**SECTION 2. AMENDMENT.** Subsection 6 of section 54-52-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. If before retiring a member dies after completing five years of eligible employment, the board shall pay the member's account balance to any beneficiary, other than the member's surviving spouse, designated by the member with the written consent of the member's spouse, if any. If the member has not designated any beneficiary, other than the member's surviving spouse under this section, the surviving spouse of the member may select one of the following optional forms of payment:
  - a. A lump sum payment of the member's retirement account as of the date of death.

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<sup>261</sup> Section 54-52-17 was also amended by section 5 of Senate Bill No. 2172, chapter 527, and section 1 of House Bill No. 1128, chapter 532.

- b. Payments for sixty months as calculated for the deceased member as if the member ~~was~~ were of normal retirement age sixty-five at the date of death.
- c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
- d. If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.

SECTION 3. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Conversion of sick leave. At termination of eligible employment a member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the member's employer, if the member pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the percent of employer and employee contributions to the retirement program of the member, plus one percent for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of the member's certified sick leave. All conversion payments must be made within sixty days of termination and before the member receives a retirement annuity.

Approved March 15, 1995  
Filed March 15, 1995

**CHAPTER 532****HOUSE BILL NO. 1128**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

**JUDGES' RETIREMENT BENEFITS**

AN ACT to amend and reenact subdivision b of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to the computation of benefits for participants in the judges' system under the public employees retirement system.

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

<sup>262</sup> **SECTION 1. AMENDMENT.** Subdivision b of subsection 4 of section 54-52-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Single life benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, which must be determined as follows:
  - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and ~~one-fourth~~ eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
  - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
  - (3) A participant who retired before August 1, 1995, is entitled to benefits calculated at two and eighty hundredths percent multiplied by the second ten years of judicial service, with the increased benefits payable beginning August 1, 1995.

Approved March 7, 1995

Filed March 7, 1995

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<sup>262</sup> Section 54-52-17 was also amended by section 5 of Senate Bill No. 2172, chapter 527, and sections 1 and 2 of Senate Bill No. 2171, chapter 531.

**CHAPTER 533****HOUSE BILL NO. 1126**

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

**UNIFORM GROUP INSURANCE BENEFITS**

AN ACT to create and enact three new sections to chapter 54-52.1 and four new subsections to section 54-52.1-02 of the North Dakota Century Code, relating to dental, vision, long-term care, and employee assistance benefits coverage under the uniform group insurance program; and to amend and reenact subsection 6 of section 54-52-04 of the North Dakota Century Code, relating to the authority of the retirement board.

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

<sup>263</sup> **SECTION 1. AMENDMENT.** Subsection 6 of section 54-52-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. The funds necessary for paying prior service and service benefits, consultant fees, and making withdrawal payments and refunds are hereby appropriated from the retirement fund for those purposes. The amount necessary to pay the consulting fees and ~~health~~ insurance benefits related to the uniform group insurance program is hereby appropriated from the insurance premiums received by the board.

**SECTION 2.** Four new subsections to section 54-52.1-02 of the North Dakota Century Code are created and enacted as follows:

Dental benefits coverage.

Vision benefits coverage.

Long-term care benefits coverage.

Employee assistance benefits coverage.

**SECTION 3.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Uniform group insurance program - Vision and dental plans. The board may establish a dental plan, a vision plan, or both, for eligible employees. The board shall receive bids for the plan or plans pursuant to section 54-52.1-04. The board may reject any or all bids and provide a plan of self-insurance. Premiums for this coverage must be paid by the eligible employee. Any refund, rebate, dividend, experience rating allowance, discount, or other reduction of premium must be credited as provided by section 54-52.1-06.

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<sup>263</sup> Section 54-52-04 was also amended by section 2 of Senate Bill No. 2172, chapter 527.



**SECTION 4.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Uniform group insurance program - Long-term care plan. The board may establish a long-term care plan for eligible employees. The board shall receive bids for the plan pursuant to section 54-52.1-04. The board may reject any or all bids and provide a plan of self-insurance. Premiums for this plan must be paid by the eligible employee. Any refund, rebate, dividend, experience rating allowance, discount, or other reduction of premium must be credited as provided by section 54-52.1-06.

**SECTION 5.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Uniform group insurance program - Employee assistance program. The board may establish an employee assistance program available to persons in the medical and hospital benefits coverage group. The premium for this coverage must be paid as provided by section 54-52.1-06. The board shall receive bids for this program pursuant to section 54-52.1-04.

Approved March 7, 1995

Filed March 7, 1995

**CHAPTER 534****SENATE BILL NO. 2175**

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

**UNIFORM GROUP INSURANCE PROGRAM FEDERAL COMPLIANCE**

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to compliance of the uniform group insurance program with federal requirements and group purchasing arrangements.

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

**SECTION 1.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Uniform group insurance program - Compliance with federal requirements - Group purchasing arrangements.** If the board determines that any section or the phraseology of any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section to comply with the federal statutes or rules, subject to the approval of the legislative council's employee benefits programs committee. The board may assume responsibility for group purchasing arrangements as provided by federal law. Any plan modifications made by the board under this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

Approved March 8, 1995

Filed March 9, 1995

## CHAPTER 535

## SENATE BILL NO. 2492

(Senators Christmann, Sand, Wanzek)  
(Representatives Belter, Carlson, Kempenich)

## COUNCIL ON THE ARTS MEMBERSHIP

AN ACT to provide for the expiration of terms of members of the North Dakota council on the arts; and to amend and reenact sections 54-54-02 and 54-54-03 of the North Dakota Century Code, relating to the members of the North Dakota council on the arts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-54-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-54-02. Council - Members - Appointment.** ~~There is hereby created and established a state council, to be known as the "The North Dakota council on the arts", which must consist~~ consists of fifteen nine members, broadly representative of all fields of the performing and fine arts, who are to be appointed by the governor as provided in this chapter, from among the citizens of ~~North Dakota the state~~ who are widely known for their competence and experience in connection with the performing and fine arts. In making ~~such these~~ appointments, due consideration must be given to the recommendations made by representative civic, educational, and professional associations and groups, concerned with or engaged in the production or presentation of the performing and fine arts generally.

**SECTION 2. AMENDMENT.** Section 54-54-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-54-03. Term of office - Filling vacancies - Chairman - Vice chairman - Expenses.** The term of office of each member is five years; provided, however, that of the members first appointed after the effective date of this Act, five three must be appointed for terms of ~~one year~~ two years, five three for terms of three years, and five three for terms of five years. ~~The governor shall make the initial appointments to the council within thirty days of July 1, 1967.~~ If a vacancy to be filled occurs otherwise than by the expiration of the term of office of a member of the council, the appointment must be made for the balance of the term only. Other than the chairman, no member of the council who serves a full five-year term is eligible for reappointment during a one-year period following the expiration of ~~his~~ the term. The governor shall designate a chairman and a vice chairman from the members of the council who shall serve at the pleasure of the governor. The chairman is the chief executive officer of the council. The members of the council may not receive any compensation for their services, but must be reimbursed for their travel expenses in the same manner and at the same rates as provided by law for other state officials for necessary travel in the performance of their duties as members of the council.

**SECTION 3. EXPIRATION DATE OF CURRENT MEMBERS' TERMS.**

The terms of the current members of the North Dakota council on the arts expire as of the effective date of this Act. Within thirty days after the effective date of this Act, the governor shall appoint three of the five council members whose terms would have expired in 1997 for the remainder of their original terms, three of the five council members whose terms would have expired in 1998 for the remainder of their original terms, and three new members to terms of five years.

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 536****SENATE BILL NO. 2267**

(Senators W. Stenehjem, Traynor)  
(Representative Kretschmar)

**UNIFORM LAWS COMMISSION MEMBERSHIP**

AN ACT to amend and reenact section 54-55-01 of the North Dakota Century Code, relating to membership on the commission on uniform state laws; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-55-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-55-01. Commission on uniform state laws - Membership.** The commission on uniform state laws ~~shall consist~~ consists of an individual engaged in the practice of law in this state, the dean or a full-time member of the faculty of the law school of the university of North Dakota, a law-trained judge of a court of record in this state, a member of the house of representatives and a member of the senate of the legislative assembly, and a member of the legislative council staff. The commission ~~shall also consist~~ consists of any residents of this state who, because of long service in the cause of uniformity of state legislation, have been elected life members of the national conference of commissioners on uniform state laws, and may also consist of any residents of this state who have been previously appointed to at least five years of service on the commission. Commissioners, except the ~~member members~~ of the legislative assembly, the member of the legislative council staff, and life members, must be appointed by the governor for terms of four years each, commencing on the first day of September following each presidential election, and shall serve until their respective successors are appointed. The ~~member members~~ of the legislative assembly on the commission must be appointed by the legislative council for a term not to exceed four years as prescribed by the legislative council, and the member of the legislative council staff must be appointed by the chairman of the legislative council.

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

Approved March 24, 1995  
Filed March 27, 1995

# STATE HISTORICAL SOCIETY AND STATE PARKS

## CHAPTER 537

### SENATE BILL NO. 2157

(Government and Veterans Affairs Committee)  
(At the request of the State Historical Society)

## STATE HISTORICAL BOARD COMPOSITION

AN ACT to amend and reenact section 55-01-01 of the North Dakota Century Code, relating to the composition of the state historical board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

**55-01-01. State historical board.** There is a state historical society of North Dakota which is under the supervision and control of the state historical board. The board consists of ~~nine~~ seven members who are appointed by the governor. Each member appointed to the board must be a citizen and resident of the state of North Dakota. Appointments are for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified ~~except that the first appointments under this section are staggered so that the term of three members expires each year. The governor shall appoint two members for terms commencing in 1996, two members for terms commencing in 1997, and three members for terms commencing in 1998.~~ Vacancies occurring other than by the expiration of an appointive term must be filled by appointment for the remainder of the term only in the same manner as regular appointments. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, ~~state engineer~~ director of the parks and recreation department, director of the department of transportation, ~~state forester~~, ~~director of the game and fish department~~, ~~state librarian~~ director of the tourism department, and state treasurer are ex officio members of the board and shall take care that the interests of the state are protected. Each ex officio member may appoint a designee to attend meetings with full voting privileges.

Approved March 7, 1995  
Filed March 7, 1995

## CHAPTER 538

### SENATE BILL NO. 2207

(Finance and Taxation Committee)

(At the request of the State Historical Society)

## STATE HISTORICAL SOCIETY FEES FOR LEASED EXHIBITS

AN ACT to amend and reenact subsection 7 of section 55-02-01.2 of the North Dakota Century Code, relating to admission fees charged by the superintendent of the state historical society for certain exhibits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 55-02-01.2 of the North Dakota Century Code is amended and reenacted as follows:

7. Keep the museum exhibition rooms in the North Dakota heritage center open to visitors at all reasonable hours on business days without fee, except that admission fees may be charged for leased exhibitions. Admission fees collected for a leased exhibition must be deposited in a special account in the special revolving fund established under section 55-02-04, and may be used only to pay the associated costs of the exhibition. Any admission fees collected in excess of the costs of a leased exhibition must be deposited in the state general fund.

Approved April 11, 1995

Filed April 12, 1995

**CHAPTER 539****SENATE BILL NO. 2156**

(Government and Veterans Affairs Committee)  
(At the request of the State Historical Society)

**CAMP HANCOCK ELIMINATED AS HISTORICAL  
MUSEUM**

AN ACT to amend and reenact section 55-02-06 of the North Dakota Century Code, relating to the location of state historical museums.

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

**SECTION 1. AMENDMENT.** Section 55-02-06 of the North Dakota Century Code is amended and reenacted as follows:

**55-02-06.** State historical museum at Pembina - Chateau de Mores - ~~Camp Hancock~~. The superintendent of the state historical board shall maintain and operate the state historical museum located at or near the city of Pembina, in the county of Pembina, and shall have custody of and preserve in the museum at Pembina, for the people of the state of North Dakota, objects of primitive Indian art and other articles of historical value to the state which are acquired for such purpose. The state historical board may accept gifts, donations, or contributions to be used or expended in the maintenance and operation of the historical museum and may transfer the operation of the museum to the city of Pembina upon such terms and conditions as the state historical board may require. The Chateau de Mores at Medora ~~and Camp Hancock at Bismarck~~ must be maintained and operated as a historic house museum ~~under the direction of the state historical board.~~

Approved March 7, 1995  
Filed March 7, 1995



## CHAPTER 540

### SENATE BILL NO. 2205

(Government and Veterans Affairs Committee)  
(At the request of the State Historical Society)

## CULTURAL RESOURCE INVESTIGATION PERMITS

AN ACT to amend and reenact section 55-03-01 of the North Dakota Century Code, relating to cultural resource investigation permits.

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

**SECTION 1. AMENDMENT.** Section 55-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee.** Any individual, organization, institution, or company engaged on one's own behalf or on behalf of another in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, or subdivision u of subsection 1 of section 38-14.1-14 ~~first shall~~ must obtain an annual permit from the superintendent of the state historical board of North Dakota. ~~Such~~ The permit ~~may be issued when an application must be in such the form and including such information as prescribed by the superintendent has been filed with such officer.~~ Each ~~such~~ application must be accompanied by a filing fee of ~~fifty~~ one hundred dollars. The superintendent may waive the fee requirement if the applicant is an instrumentality of the state of North Dakota. Following issuance of the annual permit, the permittee shall submit to the state historical society of North Dakota payment in the amount of ~~twenty-five~~ fifty dollars with every cultural resources identification, evaluation, and mitigation report submitted to the superintendent in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under chapters 10-24 through 10-28 does not have to pay the fee for filing the report.

Approved March 7, 1995  
Filed March 7, 1995

**CHAPTER 541****HOUSE BILL NO. 1080**

(Representative Olson)

(At the request of the Parks and Recreation Department)

**PARKS AND RECREATION DEPARTMENT TECHNICAL ASSISTANCE CHARGES**

AN ACT to amend and reenact section 55-08-05 of the North Dakota Century Code, relating to charges for special technical assistance services by the parks and recreation department.

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

<sup>264</sup> **SECTION 1. AMENDMENT.** Section 55-08-05 of the North Dakota Century Code is amended and reenacted as follows:

**55-08-05. Charges for services.** The director is hereby authorized to provide special services within state parks, state campgrounds, state recreation areas, and reserves; provide special technical assistance services; and to make rules and regulations for the use of such services. The director shall establish and cause to be collected charges, fees, and rentals for the use of all such special services, and shall revise the same, when necessary, in such manner that the revenue derived therefrom will be sufficient to pay the cost of providing each such service and to pay the principal of and interest on all bonds issued for projects furnishing the facilities for any such services, and to maintain a reserve for the security of said bonds as herein provided. The director may waive the collection of charges, fees, and rentals for the use of all such special services by health care-related charitable organizations conducting group camp activities without charge to participants. However, the director shall waive the collection of charges, fees, and rentals for the use of all special services by any care-related charitable organization sponsoring or conducting summer group camp activities without charge for fourteen days for children from age eight through age fourteen who have diabetes. Nothing in this section requires the director to provide camp services if the camp facilities are otherwise closed due to adverse administrative or fiscal impacts upon the department. Specifically, but without limitation of said general authorization, the director may:

1. Provide special parking space for automobiles or other motor-driven vehicles in any state park or state recreation area.
2. Provide special parking spurs and campgrounds for automobiles and sites for tent-camping and special auto trailer coach parking spaces for the use of the individual charged for such space according to the daily rate which must be determined and fixed by the director consistent with the type of facility provided for the accommodation of visitors in any particular park and with similar facilities offered for tourist camping in the area.

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<sup>264</sup> Section 55-08-05 was also amended by section 1 of Senate Bill No. 2220, chapter 542.

3. Charge a fee for entrance to any pageant grounds which may be created in any state park, state recreation area, or reserve for the purpose of having historical or other pageants conducted by the agent of any authorized agency.
4. Provide water, sewer, and electric service to trailer or tent campsites and buildings and structures included in projects authorized by the legislative assembly.
5. Provide facilities for the sale to the public of food, nonintoxicating beverages, except beer and wine sales as provided in subsection 6, and other merchandise and personal services of a suitable nature, and make buildings, structures, and other recreational facilities available for use and occupancy by the public, or contract for the lease of any such buildings, structures, and facilities to a concessionaire to be operated on such terms and compensation basis as the director determines to be in the best interest of the state. A bond must be required of each concessionaire in such amount as the director determines, conditioned upon the faithful performance of all duties under the lease and proper accounting for all funds.
6. Allow the sale of beer and wine by concessionaires on property leased to the department by the United States department of the army, corps of engineers, provided the concessionaire also obtains the appropriate local and state licenses required by section 5-02-01.
7. Charge and collect motor vehicle permit fees in such amounts as are or may be prescribed by the legislative assembly, not less than the amounts now prescribed in section 55-08-06, which fees are and must be imposed for the sole purposes of paying capital costs of projects required to provide the special services herein described and referred to, and of meeting the principal and interest and reserve requirements of bonds issued to finance such projects.
8. Charge a fee for providing special technical assistance to groups requesting information from the natural heritage inventory data base.

Approved March 14, 1995  
Filed March 14, 1995

## CHAPTER 542

## SENATE BILL NO. 2220

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

## STATE PARK ENTRANCE FEES

AN ACT to amend and reenact subsection 7 of section 55-08-05, sections 55-08-06, and 55-08-06.2 of the North Dakota Century Code, relating to motor vehicle and senior citizen passport park entrance fees.

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

<sup>265</sup> SECTION 1. AMENDMENT. Subsection 7 of section 55-08-05 of the North Dakota Century Code is amended and reenacted as follows:

7. Charge and collect motor vehicle permit fees in ~~such the amounts as are or may be~~ prescribed by the legislative assembly; ~~not less than the amounts now prescribed in section 55-08-06~~, which fees are and must be imposed for the sole purposes of paying capital costs of projects required to provide the special services herein described and referred to, and of meeting the principal and interest and reserve requirements of bonds issued to finance such projects.

SECTION 2. AMENDMENT. Section 55-08-06 of the North Dakota Century Code is amended and reenacted as follows:

**55-08-06. Permits for motor vehicles.** Unless authorized by the director, no motor vehicle may enter or be permitted to enter any state park, state recreational area, or reserve unless the operator of such motor vehicle shall display upon request a permit issued as provided in this chapter. Permits must be of a size, form, and character as the director shall prescribe, and the director shall procure permits for each calendar year which by appropriate language must grant permission to use any state park, state recreational area, or reserve. Permits for each calendar year must be provided and placed on sale on or before November first next preceding, and used on or at any time after that date until May first of the year following the calendar year for which issued. Such permits in each category must be numbered consecutively for each year of issue. ~~A maximum~~ Except as provided in section 55-08-06.2, a fee of fifteen twenty dollars may must be charged for each permit issued, except that permits of appropriate special design may be sold individually at a maximum of three dollars per permit covering the use of state parks, state recreational areas, or reserves under such conditions as the director may prescribe for a designated period of not more than three days. The fees collected must be deposited in the state park operating fund in the state treasury, unless authorized by the director as follows:

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<sup>265</sup> Section 55-08-05 was also amended by section 1 of House Bill No. 1080, chapter 541.

1. The director may allow other agencies or organizations that have leased state parks, state recreation areas, reserves, or facilities to retain entrance and special permit fees collected by the lessee.
2. The director may exempt all or any part of any state park, state recreational area, or reserve from the requirement of the motor vehicle permit and fee, for any activity or period, when in the director's judgment it is desirable to do so; provided, however, that no further exceptions can be made after state park revenue bonds are issued and while such bonds are outstanding.

**SECTION 3. AMENDMENT.** Section 55-08-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**55-08-06.2. North Dakota senior citizens passport.** The director shall establish procedures providing for the issuance of an annual entrance permit to be known as the "North Dakota senior citizens passport". The permit must be issued to any resident of North Dakota who is sixty-five years of age or older and who applies for a permit. The permit is nontransferable, entitles the bearer and any person accompanying the bearer in a single, private, noncommercial vehicle to entry into any state park, state recreation area, or reserve, and ~~must~~ may be issued for ~~fifty percent of the regular permit fee.~~ The provisions of this section that provide a reduction of fees are effective notwithstanding any provisions to the contrary contained in this chapter at a discounted rate authorized by the director.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 543****SENATE BILL NO. 2208**

(Government and Veterans Affairs Committee)

(At the request of the State Historical Society)

**UNCLAIMED PROPERTY HELD BY MUSEUMS**

AN ACT to create and enact a new chapter to title 55 of the North Dakota Century Code, relating to unclaimed property held by museums or historical societies.

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

**SECTION 1.** A new chapter to title 55 of the North Dakota Century Code is created and enacted as follows:

**When property held by museum or historical society deemed abandoned.** Any property held by a museum or historical society in this state that is held for ten years or more and to which no person has made claim is deemed to be abandoned and becomes the property of the museum or society, provided the museum or society has complied with the publication and notice requirements of this chapter.

**Publication of notice of abandoned property.** The museum or society shall publish a notice as a display advertisement entitled "notice of abandoned property held by a museum or historical society" at least once each week for two successive weeks in a legal newspaper of general circulation in the county in this state where the last known address of any owner of property named in the notice is located. If no address is listed or if the address is outside this state, the notice must be published in the county in which the holder of the abandoned property has that person's principal place of business within this state.

**Notice requirements for abandoned property.** The published notice for abandoned property held by a museum or historical society must contain:

1. The name and last known address, if any, of the last known owner of property;
2. A description of the property; and
3. A statement that if proof of claim is not presented by the owner to the museum or society and if the owner's right to receive the property is not established to the museum's or society's satisfaction within sixty-five days from the date of the second published notice, the property is deemed abandoned and becomes the property of the museum or society.

**Title to abandoned property vested in museum or historical society.** If no claim has been made to the property within sixty-five days from the date of the second published notice, title to the property vests in the museum or society, free of all claims of the owner and of all persons claiming through or under the owner.

Approved March 7, 1995

Filed March 7, 1995

# TAXATION

## CHAPTER 544

### HOUSE BILL NO. 1450

(Representatives Gulleason, Aarsvold, Austin)

## FEDERAL OFFER AND COMPROMISE LIABILITY REDUCTION

AN ACT to amend and reenact subsection 14 of section 57-01-02 of the North Dakota Century Code, relating to authority of the tax commissioner to reduce tax liability based on a federal offer and compromise.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>266</sup> SECTION 1. AMENDMENT. Subsection 14 of section 57-01-02 of the North Dakota Century Code is amended and reenacted as follows:

14. May, upon a showing of good cause, waive any and all tax due. A lien must have been filed against the debtor's property prior to the request for a waiver. The waiver must be approved by the attorney general. Notwithstanding the provisions of this section, if a debtor and the internal revenue service enter into an offer and compromise pursuant to section 7122 of the Internal Revenue Code [26 U.S.C. 7122], as amended, the tax commissioner may reduce a debtor's individual income tax liability. However, if the federal offer and compromise, for any reason, is subsequently declared void by the internal revenue service, the debtor is liable for the original amount of tax due.

Approved March 21, 1995  
Filed March 23, 1995

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<sup>266</sup> Section 57-01-02 was also amended by section 52 of House Bill No. 1026, chapter 350.

**CHAPTER 545****SENATE BILL NO. 2452**

(Senators W. Stenehjem, C. Nelson)  
(Representatives Mahoney, Maragos)

**CONTROLLED SUBSTANCE TAX IMPOSITION**

AN ACT to provide for the sale of controlled substance tax stamps as novelties by the tax commissioner; to repeal chapter 57-36.1 of the North Dakota Century Code, relating to the imposition of the controlled substance tax; and to provide an expiration date.

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

**SECTION 1. Sale of tax stamps as novelties.** The tax commissioner may sell controlled substance tax stamps that have been made pursuant to chapter 57-36.1 as novelties for not more than ten dollars per stamp, inclusive of sales tax.

**SECTION 2. REPEAL.** Chapter 57-36.1 of the North Dakota Century Code is repealed.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through June 30, 1997, and after that date is ineffective.

Approved March 31, 1995

Filed April 3, 1995



**CHAPTER 546****HOUSE BILL NO. 1202**

(Representatives Rennerfeldt, Grosz, Johnson, Kempenich)  
(Senators Bowman, Wanzek)

**NONTRADITIONAL LIVESTOCK FARM BUILDING TAX  
EXEMPTION**

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to the farm buildings property tax exemption as it applies to producers of nontraditional livestock; and to provide an effective date.

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

<sup>267</sup> **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or improvement used in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection.
- b. It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
  - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than fifty percent of his annual net income.

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<sup>267</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1396, chapter 547.

- (2) "Farmer" means an individual who normally devotes the major portion of his time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty percent of his annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which he lives and for which the exemption is claimed.
- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
  - (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
  - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (4) For purposes of applying the income requirements of this subdivision, if a husband and wife reside together in a residence claimed as exempt under this subdivision because both or one of them is a farmer, not less than fifty percent of their combined net income from all sources must be net income from farming activities as defined in paragraph 3 in order for the residence to qualify for the exemption.
- (5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant was, or was not, net income from farming activities; provided, that if that occupant is married and they both occupy the residence, it shall be stated in the written statement that their net income from farming activities was, or was not, fifty percent or more of their combined net income from all sources.
- (6) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than thirty thousand dollars during each of the three preceding calendar years. The provisions of this paragraph do not apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which he lives and for which the exemption is claimed.

- (7) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 7, 1995

Filed March 8, 1995

## CHAPTER 547

**HOUSE BILL NO. 1396**  
(Representatives Timm, Kretschmar)  
(Senators Kinnoin, W. Stenehjem)**RAILROAD PERSONAL PROPERTY TAX EXEMPTION**

AN ACT to amend and reenact subsection 25 of section 57-02-08 of the North Dakota Century Code, relating to a tax exemption for personal property of railroads; and to provide an effective date.

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

<sup>268</sup> **SECTION 1. AMENDMENT.** Subsection 25 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

25. All personal property ~~not is exempt except:~~

- a. Personal property of entities, other than railroads, required by section 4 of article X of the Constitution of North Dakota to be assessed by the state board of equalization ~~shall become exempt from assessment and taxation in the year 1970 and such property shall not be assessed or taxed for that year or for any year thereafter; provided, that this provision shall not apply to any.~~
- b. Any property that is ~~either~~ subjected to a tax which is imposed in lieu of ad valorem taxes ~~or to any.~~
- c. Any particular kind or class of personal property, including mobile homes or house trailers, that is subjected to a tax imposed pursuant to any other provision of law ~~except as specifically provided in this subsection.~~

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 10, 1995  
Filed March 13, 1995

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<sup>268</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1202, chapter 546.

## CHAPTER 548

### HOUSE BILL NO. 1142

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

### TAX LIENS FILING

AN ACT to amend and reenact subsection 3 of section 57-02-08.3, sections 57-38-49, 57-38-50, subsections 3, 4, 5, and 6 of section 57-39.2-13, subsections 3, 4, 5, and 6 of section 57-40.2-16, subsections 2, 3, and 4 of section 57-40.3-07.1, subsections 3, 4, and 6 of section 57-43.1-17.4, and subsections 3, 4, and 6 of section 57-43.2-16.3 of the North Dakota Century Code, relating to the filing of tax liens with the secretary of state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 57-02-08.3 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Any credit allowed under subsection 1, plus interest in the amount of nine percent per year from the time the credit is taken, ~~shall create~~ creates a lien in favor of the state against the property upon which the special assessment credit is allowed and ~~shall remain~~ remains a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.
- b. (1) Except as otherwise provided in this subdivision, ~~no a~~ transfer of title to the homestead because of sale, death, or otherwise ~~shall may not~~ be made without the lien being satisfied. When a credit under subsection 1 is allowed, the county auditor shall cause a notice of lien of record to be filed against subject property with the ~~register of deeds~~ secretary of state.
- (2) When a transfer occurs between spouses because of the death of one of them, the lien allowed by this section need not be satisfied until the property is again transferred.
- c. This lien ~~shall have~~ has precedence over all other liens except general tax liens and prior special assessment liens and shall not be divested at any judicial sale. ~~No A~~ mistake in the description of the property covered by this lien or in the name of the owner of ~~such the~~ property ~~shall does not~~ defeat the lien if the property can be identified by the description in the special assessment list.

**SECTION 2. AMENDMENT.** Section 57-38-49 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-49. Preservation of lien.** In order to preserve the lien provided for in section 57-38-48 against subsequent mortgagees, purchasers, or judgment creditors,

for value and without notice of the lien, on any property situated in any county the state, the ~~tax~~ commissioner shall file with the ~~register of deeds of the county in which said property is located~~ secretary of state a notice of ~~said the~~ lien. The ~~register of deeds of each county~~ secretary of state shall ~~prepare and keep in his office a book to be known as index of tax liens; so ruled as to show in appropriate columns enter in the central indexing system~~ the following data, under the names of taxpayers arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of North Dakota" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. When satisfied.

The ~~register of deeds~~ secretary of state shall endorse on each notice of lien the day, hour, and minute when received and shall preserve the same, and ~~forthwith~~ shall index ~~said the~~ notice in the ~~index book~~ central indexing system. ~~Such~~ The lien is effective as against subsequent creditors, purchasers, and encumbrances from the time of the ~~filing thereof~~ indexing. Any notice of lien filed by the commissioner with a register of deeds prior to the effective date of this Act may be refiled with the secretary of state without changing its original priority in the county where the lien was filed. The ~~register of deeds~~ secretary of state shall accept any ~~such~~ lien for filing when it is received with no payment of fees or costs to be made on behalf of the ~~tax~~ commissioner.

**SECTION 3. AMENDMENT.** Section 57-38-50 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-50. Satisfaction of lien.** Upon the payment of a tax, together with any penalties and interest attached, as to which the ~~tax~~ commissioner has filed a notice of lien with the ~~register of deeds~~ secretary of state, the ~~tax~~ commissioner ~~forthwith~~ shall file with ~~said register of deeds~~ the secretary of state a satisfaction of ~~such the~~ tax and lien and the ~~register of deeds~~ secretary of state shall enter ~~such the~~ satisfaction on the notice on file in ~~his office~~ and shall indicate that fact on the ~~index~~ central indexing system with no payment of fees or costs to be made on behalf of the tax commissioner.

**SECTION 4. AMENDMENT.** Subsections 3, 4, 5, and 6 of section 57-39.2-13 of the North Dakota Century Code are amended and reenacted as follows:

3. In order to preserve the ~~aforsaid~~ lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county the state, the commissioner shall file with the ~~register of deeds of the county in which said property is located~~ secretary of state, a notice of ~~said the~~ lien.
4. The ~~register of deeds of each county~~ secretary of state shall ~~prepare and keep in his office a book known as "Index of Tax Liens"; so ruled as to show in appropriate columns all of~~ enter in the central indexing system

the following data, under the names of taxpayers, arranged alphabetically:

- a. The name of the taxpayer.
- b. The name "State of North Dakota" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien ~~when~~ then due.
- f. When satisfied.

The ~~register of deeds~~ secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and ~~forthwith~~ shall index ~~said~~ the notice in ~~said index book~~ the central indexing system and the ~~said~~ lien is effective from the time of ~~the~~ indexing thereof. Any notice of lien filed by the commissioner with a register of deeds before the effective date of this Act may be refiled with the secretary of state without changing its original priority in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the filing of ~~such~~ the lien, or for ~~the~~ its satisfaction ~~thereof~~.
6. Upon the payment of a tax ~~as to~~ which the commissioner has filed notice with the ~~register of deeds~~ secretary of state, the commissioner ~~forthwith~~ shall file with ~~said register of deeds~~ the secretary of state a satisfaction of ~~said~~ the tax and the ~~register of deeds~~ secretary of state shall enter ~~said~~ the satisfaction on the notice on file in ~~his office~~ and indicate ~~said~~ that fact ~~on~~ in the ~~index aforesaid~~ central indexing system.

SECTION 5. AMENDMENT. Subsections 3, 4, 5, and 6 of section 57-40.2-16 of the North Dakota Century Code are amended and reenacted as follows:

3. In order to preserve the ~~aforesaid~~ lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in ~~a county~~ the state, the commissioner shall file with the ~~register of deeds of the county in which said property is located~~ secretary of state, a notice of ~~said~~ the lien.
4. The ~~register of deeds of each county~~ secretary of state shall ~~prepare and keep in his office a book known as "Index of Tax Liens", so ruled as to show in appropriate columns all of~~ enter in the central indexing system the following data, under the names of taxpayers, arranged alphabetically:
  - a. The name of the taxpayer.
  - b. The name "State of North Dakota" as claimant.
  - c. Time notice of lien was received.

- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The ~~register of deeds~~ secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and ~~forthwith shall index said the notice in said index books and forthwith shall record said lien in the manner provided for recording real estate mortgages~~ the central indexing system, and the ~~said~~ lien is effective from the time of ~~the indexing thereof~~. Any notice of lien filed by the commissioner with a register of deeds before the effective date of this Act may be refiled with the secretary of state without changing its original priority in the county where the lien was filed.

- 5. The commissioner is exempt from the payment of the recording and filing fees as otherwise provided by law for the recording and filing of ~~such the~~ the lien, or for ~~the its~~ its satisfaction ~~thereof~~.
- 6. Upon the payment of a tax ~~as to~~ to which the commissioner has filed notice with the ~~register of deeds~~ secretary of state, the commissioner ~~forthwith shall file with said register of deeds the~~ secretary of state a satisfaction of ~~said the~~ the tax and the ~~register of deeds~~ secretary of state shall enter ~~said the~~ the satisfaction on the notice on file ~~in his office~~ and indicate ~~said that~~ that fact ~~on in the index aforesaid~~ in the central indexing system.

SECTION 6. AMENDMENT. Subsections 2, 3, and 4 of section 57-40.3-07.1 of the North Dakota Century Code are amended and reenacted as follows:

- 2. In order to preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in ~~a county~~ the state, the ~~tax~~ commissioner shall file with the ~~register of deeds of the county in which the property is located~~ secretary of state, a notice of the lien.
- 3. The ~~register of deeds of each county~~ secretary of state shall ~~prepare and keep in his office a book known as "Index of Tax Liens"; so ruled as to show in appropriate columns all of~~ enter in the central indexing system the following data, under the names of taxpayers, arranged alphabetically:
  - a. The name of the taxpayer.
  - b. The name, "State of North Dakota" as claimant.
  - c. The time notice of lien was received.
  - d. The date of notice.
  - e. The amount of the lien ~~when~~ then due.
  - f. When satisfied.



The ~~register of deeds~~ secretary of state shall endorse on each notice of lien the day, hour, and minute received and preserve and index the notice in the ~~index book~~ central indexing system, and the lien is effective from the time of the indexing. Any notice of lien filed by the commissioner with a register of deeds before the effective date of this Act may be refiled with the secretary of state without changing its original priority in the county where the lien was filed. The ~~tax~~ commissioner is exempt from the payment of fees otherwise provided by law for the filing or the satisfaction of ~~such liens~~ the lien.

4. Upon the payment of a tax relative to which the ~~tax~~ commissioner has filed notice with the ~~register of deeds~~ secretary of state, the ~~tax~~ commissioner shall file with the ~~register of deeds~~ secretary of state a satisfaction of the tax, and the ~~register of deeds~~ secretary of state shall enter the satisfaction on the notice on file ~~in his office~~ and indicate that fact ~~on~~ in the ~~index~~ central indexing system.

SECTION 7. AMENDMENT. Subsections 3, 4, and 6 of section 57-43.1-17.4 of the North Dakota Century Code are amended and reenacted as follows:

3. To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commissioner shall file a notice of the lien with the ~~register of deeds of the county in which the property is located~~ secretary of state.
4. The ~~register of deeds of each county~~ secretary of state shall prepare and keep in the ~~register of deed's office~~ a book known as "index of tax liens", so ruled as to show in appropriate columns ~~all of~~ enter in the central indexing system the following data, under the names of taxpayers, arranged alphabetically:
  - a. The name of the taxpayer.
  - b. The name "~~state~~ State of North Dakota" as claimant.
  - c. The time notice of lien was received.
  - d. The date of notice.
  - e. The amount of lien ~~when~~ then due.
  - f. The date of satisfaction.

The ~~register of deeds~~ secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the ~~index book~~ central indexing system and the lien is effective from the time of indexing. Any notice of lien filed by the commissioner with a register of deeds before the effective date of this Act may be refiled with the secretary of state without changing its original priority in the county where the lien was filed.

6. Upon payment of a tax ~~as to~~ which the commissioner has filed notice with the ~~register of deeds~~ secretary of state, the commissioner shall file with the ~~register of deeds~~ secretary of state a satisfaction of tax and the

~~register of deeds~~ secretary of state shall enter the satisfaction on the notice on file and indicate the fact on the ~~index~~ central indexing system.

**SECTION 8. AMENDMENT.** Subsections 3, 4, and 6 of section 57-43.2-16.3 of the North Dakota Century Code are amended and reenacted as follows:

3. To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commissioner shall file a notice of the lien with the ~~register of deeds of the county in which the property is located~~ secretary of state.
4. The ~~register of deeds of each county~~ secretary of state shall ~~prepare and keep in the register of deed's office a book known as "index of tax liens", so ruled as to show in appropriate columns all of enter in the central indexing system~~ the following data, under the names of taxpayers, arranged alphabetically:
  - a. The name of the taxpayer.
  - b. The name "~~state~~ State of North Dakota" as claimant.
  - c. The time notice of lien was received.
  - d. The date of notice.
  - e. The amount of lien ~~when~~ then due.
  - f. The date of satisfaction.

The ~~register of deeds~~ secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the ~~index book~~ central indexing system and the lien is effective from the time of indexing. Any notice of lien filed by the commissioner with a register of deeds before the effective date of this Act may be refiled with the secretary of state without changing its original priority in the county where the lien was filed.

6. Upon payment of a tax as to which the commissioner has filed notice with the ~~register of deeds~~ secretary of state, the commissioner shall file with the ~~register of deeds~~ secretary of state a satisfaction of tax and the ~~register of deeds~~ secretary of state shall enter the satisfaction on the notice on file and indicate the fact ~~on~~ in the ~~index~~ central indexing system.

**SECTION 9. EFFECTIVE DATE.** This Act is effective for tax liens filed on or after July 1, 1996.

Approved March 6, 1995  
Filed March 6, 1995

**CHAPTER 549****SENATE BILL NO. 2524**

(Senator Kelsh)  
(Representative Gulleeson)

**IRRIGATED CROPLAND ASSESSMENTS**

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to consideration of irrigation in the valuation of cropland; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-27.2. Valuation and assessment of agricultural lands.** "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. Total the annual gross returns for the most recent six years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the six.
2. Divide the figure arrived at in subsection 1 by four.

To find the "capitalized average annual gross return" for years after 1983, the average annual gross return must be capitalized by a rate which is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

It is the duty of the agricultural economics department of North Dakota state university to compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis, to

compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and to provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. Prior to January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

Prior to February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. Such estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall, wherever possible, use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

It is the duty of each local assessor to determine the relative value of each assessment parcel within his jurisdiction and to determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to the provisions in section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the first three taxable years beginning after December 31, 1994, and is thereafter ineffective.

Approved April 13, 1995  
Filed April 18, 1995

## CHAPTER 550

### SENATE BILL NO. 2074

(Legislative Council)  
(Interim Natural Resources Committee)  
(Senator Nalewaja)  
(Representatives D. Henegar, Coats, Hanson)

## GAME AND FISH PAYMENTS IN LIEU OF TAXES

AN ACT to amend and reenact subsection 1 of section 57-02.1-05 and section 57-02.1-06 of the North Dakota Century Code, relating to payments in lieu of real estate taxes made by the game and fish department.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receipt of the decision of the state board of equalization, the director of the game and fish department shall compute the payments due to the counties in which property subject to valuation is located by extending the mill levies which apply to other taxable property in the taxing districts in which the property is located. The mill levies must be extended against the property subject to valuation in the same manner as used for other taxable property in the taxing districts. If the property subject to valuation is leased or held by lease or license from the United States, the director of the game and fish department shall deduct from the payment due to the county any amount paid to that county by the United States or any agency or instrumentality of the United States in lieu of real estate taxes on that property, up to a maximum of seventy-five cents per acre [hectare]. The payments due to each county are the figure determined as herein provided. No county may receive less in these payments for any parcel or tract of land for any year than the county received in payments made pursuant to this chapter for 1974.

**SECTION 2. AMENDMENT.** Section 57-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-02.1-06. Allocation of revenue within counties.** The revenue to which the county level of government is entitled must be determined according to the proportion the county mill levy on other real property bears to the total mill levies on real property of each taxing district wherein the property subject to valuation is located. The revenue remaining after apportionment to the county level must be apportioned and distributed among the various taxing districts in which the property for which payments are made is located by the county auditor upon a pro rata basis to be determined according to the proportion the assessed value of the property subject to valuation in each taxing district bears to the total assessed value of all such property subject to valuation within the county. However, if the property subject to valuation is leased or held by lease or license from the United States, the payment made by the director of the game and fish department must be apportioned and distributed among the various taxing districts, other than the county, in which the property for which payments are made is located, by the county auditor upon a pro rata basis to be determined according to the proportion the assessed value of the

property subject to valuation in each taxing district bears to the total assessed value of all such property subject to valuation within the county. The amount of revenue allocated to each taxing district in which ~~such~~ the property subject to valuation is located must be divided among the various funds of ~~such~~ the district according to the proportion that the mill levy for any fund bears to the total of all mill levies spread against other property in the taxing district that is assessed and taxed on an ad valorem basis.

Approved April 11, 1995

Filed April 12, 1995

## CHAPTER 551

## HOUSE BILL NO. 1360

(Representatives Glassheim, Delmore)

## BUILDING IMPROVEMENT TAX EXEMPTIONS

AN ACT to amend and reenact section 57-02.2-03 of the North Dakota Century Code, relating to the authority of cities and counties concerning property tax exemptions for improvements to commercial and residential buildings and structures; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-02.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-02.2-03. Tax exemption for improvements to commercial and residential buildings and structures - Property owner's certificate.** Improvements to commercial and residential buildings and structures as defined in this chapter may be exempt from assessment and taxation for up to three years from the date of commencement of making the improvements, if the exemption is approved by the governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits. The governing body of the city or county may limit or impose conditions upon exemptions under this section, including limitations on the time during which an exemption is allowed. A resolution adopted by the governing body of the city or county under this section may be rescinded or amended at any time. The exemption provided by this chapter shall apply only to that part of the valuation resulting from the improvements which is over and above the assessed valuation, exclusive of the land, placed upon the building or structure for the last assessment period immediately preceding the date of commencement of the improvements. Any person, corporation, limited liability company, association, or organization owning real property and ~~claiming~~ seeking an exemption ~~pursuant to the provisions of~~ under this chapter shall file with the assessor a certificate setting out the facts upon which the claim for exemption is based. ~~The assessor shall furnish a copy of the certificate to the county director of tax equalization.~~ The assessor shall determine whether the improvements qualify for the exemption based on the resolution of the governing body of the city or county, and if ~~he~~ the assessor determines that the exemption should apply, upon approval of the governing body, the exemption ~~shall be~~ is valid for the three-year prescribed period and shall not terminate upon the sale or exchange of the property but shall be transferable to subsequent owners ~~for such three-year period.~~ If the certificate is not filed as herein provided, the assessor shall regard the improvements as nonexempt and shall assess them as such. ~~The decision of the assessor shall be subject to correction, abatement, and appeal in the manner provided by law for other assessments.~~

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 552****SENATE BILL NO. 2081**

(Legislative Council)  
(Interim Taxation Committee)

**PROPERTY TAX LEVY LIMITATIONS**

AN ACT providing optional property tax levy authority for political subdivisions and providing limitations on that authority; and to provide an effective date and an expiration date.

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

**SECTION 1. Protection of taxpayers and taxing districts.** Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
  - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year; and
  - b. "Budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy two percent more in taxable year 1995 and two percent more in taxable year 1996 than the amount levied in dollars in the base year and for taxable years 1997 and 1998 may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
  - a. Reduced by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year. However, no reduction may be made under this section due to the exemption of the personal property of railroads by enactment of House Bill No. 1396 by the fifty-fourth legislative assembly.
  - b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.



- c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
  - a. Any irrepealable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
  - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

**SECTION 2. Protection of taxpayers and taxing districts.** Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:

- a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year;
  - b. "Budget year" means the taxing district's year for which the levy is being determined under this section; and
  - c. "Calculated mill rate" means the mill rate that results from dividing the base year taxes levied by the sum of the taxable value of the taxable property in the base year plus the taxable value of the exempt property calculated in the same manner as taxable property.
3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
  - a. Reduced by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable and exempt property that is not included in the taxing district for the budget year but was included in the taxing district for the base year.
  - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable and exempt property that was not included in the taxing district for the base year but which is included in the taxing district for the budget year.
  - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:

- a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
  - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
  8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

**SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the taxable years beginning after December 31, 1994. Section 1 of this Act is effective for the first four taxable years beginning after December 31, 1994, and is thereafter ineffective. Section 2 of this Act is effective for the taxable years beginning after December 31, 1998.

Approved April 18, 1995  
Filed April 18, 1995

**CHAPTER 553****HOUSE BILL NO. 1333**

(Representatives Brown, DeKrey)  
(Senators Traynor, Yockim)

**COUNTY ROAD TAX LEVY LIMITATIONS**

AN ACT to amend and reenact subsection 1 of section 57-15-06.3 and subsection 17 of section 57-15-06.7 of the North Dakota Century Code, relating to the tax levy for county road programs of farm-to-market and federal-aid roads.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-15-06.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The board of county commissioners of any county may prepare a proposed county construction program of farm-to-market and federal-aid roads on the county road system, setting forth a general description of the roads to be constructed, the location of bridges constituting a part of the program, the approximate total mileage, and the priority of construction. After approval of the program by the state department of transportation, the board may submit the program to the electors of the county with the question of levying a tax not exceeding the limitation in subsection 17 of section 57-15-06.7 for the completion of the program by matching, from the proceeds of the tax, federal funds available for federal-aid, secondary and feeder roads, farm-to-market roads, and all roads as provided for under federal-aid highway acts. If the majority of the electors voting on the question approved the program and levy, the board shall levy a tax not in excess of fifteen mills the levy established by the ballot.

<sup>269</sup> **SECTION 2. AMENDMENT.** Subsection 17 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

17. A county levying a tax for farm-to-market and federal-aid roads as provided in section 57-15-06.3 may levy a tax not exceeding fifteen mills the levy established by the ballot approved by the electors as provided in that section.

Approved March 7, 1995  
Filed March 8, 1995

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<sup>269</sup> Section 57-15-06.7 was also amended by section 12 of House Bill No. 1214, chapter 61, and section 14 of House Bill No. 1214, chapter 61, which repealed subsection 3.

**CHAPTER 554****SENATE BILL NO. 2302**

(Senators W. Stenehjem, DeMers, St. Aubyn)  
(Representatives Delmore, Kliniske)

**COURT FACILITY LEASES**

AN ACT to amend and reenact section 57-15-59 of the North Dakota Century Code, relating to counties' and cities' authority to enter leases for court facilities.

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

**SECTION 1. AMENDMENT.** Section 57-15-59 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-59. Counties' and cities' authority to enter leases for court, correction, and law enforcement facilities and dedicate mill levies.** Notwithstanding any other provision of law, counties and cities, including home rule counties and cities, may upon a two-thirds vote of the governing body enter into leases for court facilities, correction centers, jails, and other law enforcement facilities for a term of one year or more but not exceeding twenty years. At the time of entering into such a lease, the governing body shall dedicate the necessary annual mill levies to fund the lease payments, and such dedicated mill levies are irrepealable for the length of the lease. The governing body may levy and dedicate a levy of up to ten mills for such purposes, and this levy is in addition to any mill levy limitations established by law or by a home rule charter. If a governing body enters into a lease with annual payments from revenue from a levy under this section, payments due under the lease are a general obligation of the county or city and backed by the full faith and credit of the county or city. A certified copy of the lease and resolution dedicating a levy under this section must be filed with the county auditor, who shall annually levy the mills set forth in the resolution for the entire term of the lease, unless the governing body provides the county auditor with a certified copy of a resolution providing that the county or city has funds available for all or part of the next year's lease payment and that no part or only a portion of the mills originally dedicated to the lease payment need to be levied for that year.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 555****HOUSE BILL NO. 1197**

(Representatives Laughlin, Maragos, Glassheim)  
(Senator Krebsbach)

**EXCESS LEVY SPECIAL ELECTION DATE**

AN ACT to amend and reenact section 57-17-02 of the North Dakota Century Code, relating to the date of a special election to authorize an excess levy of taxes.

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

**SECTION 1. AMENDMENT.** Section 57-17-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-17-02. Election to authorize excess levy of taxes.** Upon the passage of the resolution authorized in section 57-17-01, the governing body of any political subdivision mentioned in such section may call a special election for the purpose of voting upon the question of authorizing an excess levy for the current year and not to exceed one succeeding year, or may submit the question to the voters at the regular primary election. If a special election is called, such election must be held not later than September ~~first~~ twentieth of the year in which the tax is to be levied, and, except as otherwise provided in this chapter, the election must be conducted as other elections of such political subdivision are conducted.

Approved March 1, 1995  
Filed March 2, 1995

**CHAPTER 556****HOUSE BILL NO. 1346**

(Representatives Jacobs, Grumbo, Huether, Poolman)  
(Senators Schobinger, Wanzek)

**TAX SALE NOTICES**

AN ACT to amend and reenact section 57-24-07 of the North Dakota Century Code, relating to notice by the county auditor of tax sales.

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

**SECTION 1. AMENDMENT.** Section 57-24-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-24-07. County auditor to give notice of tax sale by publication.** The county auditor shall give notice of the delinquent real estate tax sale by publishing in the official newspaper of the county a notice, over ~~his~~ the auditor's signature, published once each week for two successive weeks, the first publication to be made at least fourteen days prior to ~~such~~ the sale. Each notice must contain the information that all lands upon which taxes for the preceding year remain unpaid will be sold, and must state the time and place of sale. The notice may not contain the name of the owner of any lot or tract, nor the description thereof, but it must state that a list of all lands subject to ~~such~~ the sale is on file and may be examined at the office of the county auditor, and that a copy of ~~such~~ the list with names of the owners and descriptions of the lands or tracts involved, and the total amount of taxes, penalties, interest, and cost of advertising, has been posted in the office of the county auditor ~~and in four or more public places in the county, giving the name and location of such places of posting.~~

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 557****SENATE BILL NO. 2527**

(Senators Krebsbach, Holmberg, Mutch)  
(Representatives Christenson, Olson, Price)

**MILITARY PERSONNEL VOTING AND RESIDENCY**

AN ACT to amend and reenact subsection 6 of section 57-38-01 of the North Dakota Century Code, relating to voting and residency for income tax purposes of active duty members of the armed forces assigned to duty in this state; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 57-38-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Resident" applies only to natural persons and includes, for the purpose of determining liability for the tax imposed by this chapter upon or with reference to the income of any income year, any person domiciled in the state of North Dakota and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the income year within the state. A full-time active duty member of the armed forces assigned to a military installation in this state, or the spouse of such a person, is not a "resident" of this state for purposes of this chapter simply by reason of having voted in an election in this state.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 27, 1995

Filed March 28, 1995



## CHAPTER 558

### HOUSE BILL NO. 1337

(Representatives Svedjan, Stenehjelm, Kaldor)  
(Senators Solberg, Robinson, Urlacher)

## CORPORATE STOCK SALE GAIN FOR INCOME TAX PURPOSES

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to gains for individual income tax purposes derived from sale of stock of certain corporations that have relocated to this state; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

#### **Gain on stock sale or transfer when corporation has relocated to this state.**

1. Gain from sale or other transfer of stock owned by a resident of this state in a corporation doing business in the primary sector which has relocated to this state is the difference between the per share price of the stock at the time of sale or transfer at any time the company qualifies under this section and the fair market value of the stock on the date of relocation. This section applies only to holders of record of the relocating company's securities on the date of relocation. This section does not apply to determination of loss from sale or transfer of stock.
2. The taxable income of an individual must be reduced by an amount equal to the gain computed for federal income tax purposes from the sale or other transfer of stock described in subsection 1 less the gain computed for state tax purposes under subsection 1 on the same stock.
3. For purposes of this section:
  - a. "Date of relocation" means the due date of the first return required to be filed by the corporation under subsection 2 of section 57-38-60.
  - b. "Fair market value" means the average trading price of the stock of the corporation. If the shares are not traded in sufficient numbers to establish an average trading price, fair market value may be established by appraisal by a qualified appraisal firm.
  - c. "Primary sector" means any business of which at least seventy percent of operating revenues represent new wealth in this state or which generates at least five million dollars in new wealth annually in this state.
  - d. "Relocated to this state" means having moved significant operations to this state.

- e. "Significant operations" means primary sector operations generating annual revenues of at least five million dollars.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved April 4, 1995

Filed April 4, 1995

## CHAPTER 559

### HOUSE BILL NO. 1440

(Representatives Sitz, Guleson, Coats, Brown)  
(Senators O'Connell, Solberg)

## GAMING INCOME TAXATION

AN ACT to amend and reenact section 57-38-03, subsection 4 of section 57-38-04, and section 57-38-05 of the North Dakota Century Code, relating to the application of income taxes to gaming income; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-03. Imposition of tax against nonresidents.** The tax imposed by this chapter must be levied, collected, and paid annually upon and with respect to income derived from all property owned, from all gaming activity carried on in this state, and from every business, trade, profession, or occupation carried on in this state by natural persons not residents of the state at the rates specified with respect to net income of resident of North Dakota.

**SECTION 2. AMENDMENT.** Subsection 4 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Income derived from carrying on a trade or business by ~~individuals~~ an individual must be assigned to this state without regard to the residence of the ~~recipients~~ individual if the trade or business is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.

**SECTION 3. AMENDMENT.** Section 57-38-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-05. Certain income of nonresidents not taxed.** Unless the income, gains, or both, arise from transactions in the regular course of the taxpayer's trade or business carried on in this state, or unless the acquisition, management, and disposition of intangible personal property constitutes a trade or business carried on in this state, or unless the income, gains, or both, arise from gaming activity carried on in this state, income of nonresidents derived from land contracts, mortgages, stocks, bonds, or other intangible personal property, or from the sale of intangible personal property, may not be taxed.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 22, 1995

Filed March 23, 1995

**CHAPTER 560****SENATE BILL NO. 2185**

(Finance and Taxation Committee)

(At the request of the Office of Management and Budget)

**CORPORATION CONSOLIDATED INCOME TAX  
RETURNS**

AN ACT to create and enact a new subsection to section 57-38-14 of the North Dakota Century Code, relating to the filing of combined reports and consolidated income tax returns by domestic corporations; and to provide an effective date.

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

**SECTION 1.** A new subsection to section 57-38-14 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, two or more North Dakota domestic corporations, affiliated as parent and subsidiary, and filing a federal consolidated tax return, shall file a combined report and consolidated return for income tax under this chapter.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 1, 1995

Filed March 1, 1995

## CHAPTER 561

## SENATE BILL NO. 2191

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

## INCOME TAX TECHNICAL CHANGES

AN ACT to amend and reenact section 57-38-30.1, subsection 4 of section 57-38-40, and subsection 5 of section 57-38-62 of the North Dakota Century Code, relating to the corporate income tax credit for new industry, claims for refunds of individual income taxes attributable to a net operating loss, and definition of net tax liability for estimated tax payment purposes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-30.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.1. Corporate tax credit for new industry.** For the purpose of providing a tax incentive to new industry in this state, any domestic corporation that has been incorporated for the first time in this state after January 1, 1969, and which is not the result of a business reorganization or acquisition, or any foreign corporation that has received a certificate of authority to transact business in this state for the first time after January 1, 1969, is entitled to receive the corporate tax credit allowed by this section by complying with the provisions herein; provided, that corporations receiving any property tax or income tax exemption allowed by ~~chapter 40-57 or~~ chapter 40-57.1, or reorganized corporations that were in existence prior to January 1, 1969, are not allowed the credit. The credit consists of a deduction from the net tax as computed under section 57-38-30 of one percent of the annual gross amount expended by the corporation for salaries and wages within the state of North Dakota for each of the first three taxable years, and a deduction from the net tax as computed under section 57-38-30 of one-half of one percent of the annual gross amount expended by the corporation for salaries and wages within the state of North Dakota for each of the fourth and fifth taxable years. After the fifth taxable year, no further deduction is allowed, and the corporation must be taxed in accordance with the schedule provided in section 57-38-30 without credit. For the purpose of this section, new industry is defined as a corporate enterprise engaged in assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products or any combination thereof.

<sup>270</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

4. A person other than a corporation may file a claim for credit or refund of an overpayment of tax resulting from the carryback of a ~~federal~~ net operating loss within three years after the prescribed due date for filing

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<sup>270</sup> Section 57-38-40 was also amended by section 1 of House Bill No. 1357, chapter 564, and section 1 of House Bill No. 1193, chapter 563.

the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection are effective for loss years beginning after December 31, 1986.

<sup>271</sup> **SECTION 3. AMENDMENT.** Subsection 5 of section 57-38-62 of the North Dakota Century Code is amended and reenacted as follows:

5. For purposes of this section, "net tax liability" means the amount of income tax computed ~~under this chapter~~ for the ~~current~~ taxable year as shown on the return less the amount of any credits allowable except tax withheld and estimated tax paid.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 2, 1995

Filed March 3, 1995

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<sup>271</sup> Section 57-38-62 was also amended by section 1 of Senate Bill No. 2189, chapter 567, and section 1 of House Bill No. 1136, chapter 568.

**CHAPTER 562****SENATE BILL NO. 2184**

(Finance and Taxation Committee)

(At the request of the Office of Management and Budget)

**COMPOSITE TAX RETURNS**

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to composite tax returns; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Composite returns.** Partnerships and subchapter S corporations may file a composite return on behalf of nonresident individual partners or shareholders in the manner prescribed by the tax commissioner. Any amount of tax paid by the partnership or subchapter S corporation on the composite return on behalf of a nonresident partner or shareholder constitutes a credit on the North Dakota return of the nonresident individual on whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed by a partnership or subchapter S corporation under this section is considered as the return of the nonresident individual partner or shareholder on whose behalf the return is filed. The tax under this section must be computed by multiplying the North Dakota taxable income by the highest federal tax rate for individuals times the tax rate imposed under section 57-38-30.3.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 1, 1995

Filed March 1, 1995

**CHAPTER 563****HOUSE BILL NO. 1193**

(Representatives Wald, Martin, Belter, Brown)  
(Senators Goetz, Urlacher)

**INCOME TAX EXTENSIONS AFTER FEDERAL  
CHANGES**

AN ACT to create and enact a new subsection and a new subdivision to subsection 7 of section 57-38-40 of the North Dakota Century Code, relating to extensions for filing amended state individual, estate, or trust income tax returns as a result of federal changes or corrections; to provide a retroactive effective date; and to provide an expiration date.

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

<sup>272</sup> **SECTION 1.** A new subdivision to subsection 7 of section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

This subsection applies to any taxable year of an individual, estate, or trust for which changes or corrections have been made by the United States internal revenue service or other competent authority.

**SECTION 2.** A new subsection to section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding the limitations in subsection 7, an individual, estate, or trust is entitled to file an amended state income tax return or other information as required by the tax commissioner to claim a refund of an overpayment of state income tax attributable to changes or corrections made by the United States internal revenue service or other competent authority, if the taxpayer was barred under subsection 7 from claiming a refund before the effective date of this Act and the person files the amended return before July 1, 1996. Any interest otherwise allowed under this chapter does not accrue after the ninety-day period prescribed in section 57-38-34.4, if this subsection applies.

**SECTION 3. RETROACTIVITY - EFFECTIVE DATE - EXPIRATION DATE.** This Act is retroactively effective for any taxable year of a taxpayer for which changes or corrections have been made by the United States internal revenue service or other competent authority. Section 2 of this Act is effective through June 30, 1996, and is thereafter ineffective.

Approved March 10, 1995  
Filed March 10, 1995

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<sup>272</sup> Section 57-38-40 was also amended by section 1 of House Bill No. 1357, chapter 564, and section 2 of Senate Bill No. 2191, chapter 561.



**CHAPTER 564****HOUSE BILL NO. 1357**

(Representatives Sitz, Gunter)

**TAX OVERPAYMENT REFUNDS**

AN ACT to create and enact a new subsection to section 57-38-40 of the North Dakota Century Code, relating to refunds of overpaid penalty and interest; and to provide an effective date.

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

<sup>273</sup> **SECTION 1.** A new subsection to section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

If the tax commissioner determines there has been an overpayment of tax, any overpaid penalty and interest on that tax must be refunded or credited by the tax commissioner.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 6, 1995

Filed March 6, 1995

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<sup>273</sup> Section 57-38-40 was also amended by section 1 of House Bill No. 1193, chapter 563, and section 2 of Senate Bill No. 2191, chapter 561.

**CHAPTER 565****HOUSE BILL NO. 1096**

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

**INCOME AND WITHHOLDING TAX INFORMATION**

AN ACT to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to the tax commissioner's use of certain information for income and withholding tax compliance purposes.

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

**SECTION 1.** A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law relating to confidentiality of information contained on returns, the tax commissioner may use information for income and withholding tax compliance purposes contained on any federal form W-2, federal form 1099, or a return filed under section 57-38-42.

Approved March 1, 1995

Filed March 2, 1995

**CHAPTER 566****SENATE BILL NO. 2341**

(Senator Heinrich)

**EMPLOYER WAGE WITHHOLDING**

AN ACT to amend and reenact subsection 1 of section 57-38-60 of the North Dakota Century Code, relating to the time for filing of state income taxes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-38-60 of the North Dakota Century Code is amended and reenacted as follows:

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~~. If the amount required to be deducted and withheld from wages paid to all of an employer's employees during the previous calendar year was less than two hundred fifty dollars, the employer may file an annual return. 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.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1995.

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 567****SENATE BILL NO. 2189**

(Finance and Taxation Committee)

(At the request of the Office of Management and Budget)

**ESTIMATED TAX PAYMENT EXEMPTION**

AN ACT to amend and reenact subsection 1 of section 57-38-62 of the North Dakota Century Code, relating to exemptions from estimated tax payment requirements; and to provide an effective date.

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

<sup>274</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 57-38-62 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual, estate, or trust that is subject to section 6654 of the Internal Revenue Code relating to a failure to pay federal estimated income tax shall, at the time prescribed in this chapter, pay estimated tax for the current taxable year. Notwithstanding any other provision of this section, an individual, estate, or trust whose net tax liability for the preceding taxable year was less than two hundred dollars is not required to pay estimated tax for the current taxable year. Married individuals who file a joint federal income tax return and are subject to section 6654 of the Internal Revenue Code must each be deemed to be subject to the federal provision. If payment of estimated tax is required, the individual, estate, or trust shall, at the time prescribed in this chapter, pay the lesser of the following:
  - a. An amount which, when added to the taxpayer's withholding, equals ninety percent of the taxpayer's current taxable year's net tax liability.
  - b. An amount which, when added to the taxpayer's withholding, equals one hundred percent of the taxpayer's net tax liability for the immediately preceding taxable year.
    - (1) This subdivision does not apply to any taxpayer who was not required by this chapter to file a return for the immediately preceding taxable year, to an individual who moved into this state during the immediately preceding taxable year, or to an estate or trust that was not in existence for the entire immediately preceding taxable year. The amount under this subdivision must be deemed to be equal to the amount in subdivision a ~~of this subsection~~ if this part applies.
    - (2) In order to satisfy the requirements of this subdivision, married individuals who are required to file separate state

<sup>274</sup> Section 57-38-62 was also amended by section 3 of Senate Bill No. 2191, chapter 561, and section 1 of House Bill No. 1136, chapter 568.

returns for the current taxable year but who were required to file a joint state return for the immediately preceding taxable year must each be required to pay estimated tax in an amount which, when added to the individual's withholding, equals the net tax liability which would have been computed for the immediately preceding taxable year if separate state returns had been required to be filed.

- (3) In order to satisfy the requirements of this subdivision, married individuals who are required to file a joint state return for the current taxable year but were required to file separate state returns for the immediately preceding taxable year must be required to pay estimated tax in an amount which, when added to their withholding, equals the sum of their separate net tax liabilities for the immediately preceding taxable year.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 568****HOUSE BILL NO. 1136**

(Finance and Taxation Committee)

(At the request of the Office of Management and Budget)

**INCOME TAX PENALTIES**

AN ACT to amend and reenact subsection 3 of section 57-38-62 of the North Dakota Century Code, relating to penalties for the nonpayment, underpayment, or late payment of estimated tax; and to provide an effective date.

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

<sup>275</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 57-38-62 of the North Dakota Century Code is amended and reenacted as follows:

3. The provisions of section 57-38-45, except those provisions relating to the imposition of a penalty, apply in case of nonpayment, late payment, or underpayment of estimated tax. For purposes of applying the penalty provisions of section 57-38-45, each of the due dates under section 57-38-63 are deemed to be a payment or return due date. For purposes of applying the interest provisions of section 57-38-45, interest accrues on a per annum basis from the due date of an installment to the fifteenth day of the fourth month following the end of the current taxable year or, with respect to any portion of the estimated tax required to be paid, the date on which the portion thereof is paid, whichever date is earlier. Notwithstanding the other provisions of this section, no ~~penalty or~~ interest is due if the estimated tax paid on or before each due date under section 57-38-63 by a corporation is based on the annualized or adjusted seasonal method under section 6655 of the Internal Revenue Code. Notwithstanding the other provisions of this section, no ~~penalty or~~ interest is due if the estimated tax of an individual, estate, or trust is less than two hundred dollars per income tax return filed.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1994.

Approved March 21, 1995

Filed March 21, 1995

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<sup>275</sup> Section 57-38-62 was also amended by section 1 of Senate Bill No. 2189, chapter 567, and section 3 of Senate Bill No. 2191, chapter 561.

## CHAPTER 569

## SENATE BILL NO. 2153

(Finance and Taxation Committee)

(At the request of the Bank of North Dakota)

TAX REFUNDS TO OFFSET DELINQUENT STUDENT  
LOANS

AN ACT to amend and reenact section 57-38.3-02 of the North Dakota Century Code, relating to offsetting state income tax refunds to pay delinquent student loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.3-02. Definitions. As used in this chapter:

1. "Claimant agency" means the department of human services or the North Dakota guaranteed student loan program.
2. "Commissioner" means the North Dakota tax commissioner or ~~his~~ the commissioner's designee.
3. "Debt" means any liquidated sum due and owing, or required to be collected by, any claimant agency which has accrued through contract, subrogation, tort, or operation of law, regardless of whether there is an outstanding judgment for that sum.
4. "Debtor" means any individual owing money to or having a delinquent or defaulted account or loan with any claimant agency, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy, or otherwise canceled under the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1219; 20 U.S.C. 1001 et seq.].
5. "Refund" means the North Dakota income tax refund which the commissioner determines to be due any individual taxpayer.

Approved March 1, 1995

Filed March 1, 1995

**CHAPTER 570****SENATE BILL NO. 2268**

(Senator Bowman)

**TIRE RETREADING SERVICE SALES TAX**

AN ACT to amend and reenact subsection 7 of section 57-39.2-01 and subsection 8 of section 57-40.2-01 of the North Dakota Century Code, relating to application of sales and use taxes to tire retreading services.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient, or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.



**SECTION 2. AMENDMENT.** Subsection 8 of section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Tangible personal property" means:
- a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
  - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
  - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
  - d. The severance of sand or gravel from the soil.

Approved March 17, 1995  
Filed March 20, 1995

**CHAPTER 571****SENATE BILL NO. 2136**

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

**CARPET AND DRAPES SALES TAX**

AN ACT to repeal section 57-39.2-03.4 of the North Dakota Century Code, relating to sales taxes on carpet and drapes.

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

**SECTION 1. REPEAL.** Section 57-39.2-03.4 of the North Dakota Century Code is repealed.

Approved April 13, 1995

Filed April 18, 1995

**CHAPTER 572****SENATE BILL NO. 2077**

(Legislative Council)

(Interim Natural Resources Committee)

(Senator Nalewaja)

(Representatives Carlisle, Hanson, Coats, Gulleeson)

**RECYCLING MACHINERY SALES TAX EXEMPTION**

AN ACT to repeal section 2 of chapter 565 of the 1993 Session Laws, relating to the expiration date for the sales and use tax exemption for recycling machinery and equipment; and to declare an emergency.

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

**SECTION 1. REPEAL.** Section 2 of chapter 565 of the 1993 Session Laws is repealed.

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

Approved March 1, 1995

Filed March 2, 1995

**CHAPTER 573****SENATE BILL NO. 2416**

(Senators Tennefos, Mutch)  
(Representatives Belter, Gorman)

**MOTOR VEHICLE SELLER'S CERTIFICATES**

AN ACT to amend and reenact section 57-40.3-05.1 of the North Dakota Century Code, relating to a motor vehicle seller's certificate furnished by a seller to a purchaser; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-40.3-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.3-05.1. Seller to furnish motor vehicle seller's certificate to purchaser.** Any person, except a licensed vehicle dealer, selling a motor vehicle must, upon request of the department of transportation, shall provide a motor vehicle seller's certificate or a completed bill of sale to the purchaser showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, and the trade-in allowance and description of the trade-in, if any. A copy of the motor vehicle seller's certificate or a completed bill of sale must be presented to the department of transportation at the time the motor vehicle is registered. If a seller's certificate is not provided at the time of registration, the motor vehicle excise tax may be determined through a used vehicle buying guide and must be based on average retail value. Every licensed vehicle dealer, at the time of sale of a motor vehicle, must complete that portion of a motor vehicle purchase certificate relating to the full purchase price of the vehicle and any allowance for a trade-in.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 1996.

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 574

### SENATE BILL NO. 2132

(Finance and Taxation Committee)

(At the request of State Radio Communications)

## TELEPHONE ACCESS LINE EXCISE TAX

AN ACT to amend and reenact section 57-40.6-02 of the North Dakota Century Code, relating to imposition of a telephone access line excise tax by counties and cities.

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

**SECTION 1. AMENDMENT.** Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-02. Authority of counties or cities to impose excise tax on telephone access lines - Procedure.** The governing body of a county or city may impose an excise tax on the use of telephone access lines in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed one dollar per month per telephone access line.
2. The question of the adoption of the excise tax must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed tax authorized under subsection 1. The question of the adoption of the excise tax may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the excise tax. The tax is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the tax for an initial six-year period.
3. If the tax authorized by this section is approved by the electors, the tax may be reimposed for six additional years without resubmitting the question to the electors.
4. ~~If the equipment necessary to establish an emergency service communication system is not available from a telephone company serving the county or city and would prove to be economically infeasible to install based on the surcharge in this section, the county or city may not impose the excise tax.~~ In any geographic area, only one political subdivision may impose the excise tax.

5. In the interest of public safety, where the customers exchange boundary and the boundary of the political subdivision imposing the tax do not coincide, and where all of the political subdivisions within the exchange boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the exchange boundary have voted for the tax, an exchange customer residing outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency telecommunications system. The telephone company may collect an additional tax, equal in amount to the basic tax on those subscribers within the exchange boundary. The additional tax amounts collected must be remitted as provided in this chapter.

Approved March 17, 1995

Filed March 20, 1995

**CHAPTER 575****HOUSE BILL NO. 1094**

(Representative Dorso)

(At the request of the Department of Transportation)

**FUELS TAX CONTINGENT INCREASE**

AN ACT to create and enact a new section to chapter 57-43.1 and a new section to chapter 57-43.2 of the North Dakota Century Code, relating to additional motor vehicle fuels taxes and special fuels taxes to be imposed if additional federal highway matching funds become available; to repeal sections 1 and 2 of chapter 573 of the 1993 Session Laws, relating to additional motor vehicle and special fuels taxes; to provide an appropriation; to provide an effective date; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 57-43.1 of the North Dakota Century Code is created and enacted as follows:

**Additional motor vehicle fuels taxes.** An additional tax in the amount and upon the conditions provided in this section is imposed on all motor vehicle fuel sold or used in this state.

1. For purposes of this section:

- a. "Additional federal highway matching funds" means amounts of federal highway matching funds available to this state during a fiscal year in excess of seventy-eight million dollars for which a letter of commitment is received from the federal highway administration.
- b. "Letter of commitment" means an annual communication received from the federal highway administration irrevocably providing that additional federal highway matching funds are available to the state of North Dakota on a matching fund basis.

2. The tax imposed under this section applies from the first full month beginning at least ten days after the director of the department of transportation certifies to the tax commissioner that a letter or letters of commitment have been received obligating federal funds in the amounts provided in this subsection. The tax imposed by this section is as follows:

- a. An additional tax of one cent per gallon [3.79 liters] if, during either the fiscal year beginning July 1, 1995, and ending June 30, 1996, or the fiscal year beginning July 1, 1996, and ending June 30, 1997, but not both, letters of commitment are received indicating the cumulative amount of additional federal highway matching funds available to the state is more than six million dollars.
- b. In addition to the tax under subdivision a, an additional tax of one cent per gallon [3.79 liters] if, during either the fiscal year beginning July 1, 1995, and ending June 30, 1996, or the fiscal year

beginning July 1, 1996, and ending June 30, 1997, but not both, letters of commitment are received indicating the cumulative amount of additional federal highway matching funds available to the state is more than fifteen million five hundred thousand dollars.

- c. In addition to the taxes imposed by subdivisions a and b, an additional tax of one cent per gallon [3.79 liters] if, during either the fiscal year beginning July 1, 1995, and ending June 30, 1996, or the fiscal year beginning July 1, 1996, and ending June 30, 1997, but not both, letters of commitment are received indicating the cumulative amount of additional federal highway matching funds available to the state is more than twenty-four million dollars.

**SECTION 2.** A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

**Additional special fuel tax.** An additional excise tax is imposed on the sale or delivery of any special fuel taxable under subsection 1 of section 57-43.2-02, in the amount and upon the conditions provided in this section.

1. For purposes of this section:

- a. "Additional federal highway matching funds" means amounts of federal highway matching funds available to this state during a fiscal year in excess of seventy-eight million dollars for which a letter of commitment is received from the federal highway administration.
- b. "Letter of commitment" means an annual communication received from the federal highway administration irrevocably providing that additional federal highway matching funds are available to the state of North Dakota on a matching fund basis.

2. The tax imposed under this section applies from the first full month beginning at least ten days after the director of the department of transportation certifies to the tax commissioner that a letter or letters of commitment have been received obligating federal funds in the amounts provided in this section. The tax imposed by this section is as follows:

- a. An additional tax of one cent per gallon [3.79 liters] if, during either the fiscal year beginning July 1, 1995, and ending June 30, 1996, or the fiscal year beginning July 1, 1996, and ending June 30, 1997, but not both, letters of commitment are received indicating the cumulative amount of additional federal highway matching funds available to the state is more than six million dollars.
- b. In addition to the tax under subdivision a, an additional tax of one cent per gallon [3.79 liters] if, during either the fiscal year beginning July 1, 1995, and ending June 30, 1996, or the fiscal year beginning July 1, 1996, and ending June 30, 1997, but not both, letters of commitment are received indicating the cumulative amount of additional federal highway matching funds available to the state is more than fifteen million five hundred thousand dollars.
- c. In addition to the taxes imposed by subdivisions a and b, an additional tax of one cent per gallon [3.79 liters] if, during either the fiscal year beginning July 1, 1995, and ending June 30, 1996, or



the fiscal year beginning July 1, 1996, and ending June 30, 1997, but not both, letters of commitment are received indicating the cumulative amount of additional federal highway matching funds available to the state is more than twenty-four million dollars.

**SECTION 3. REPEAL.** Sections 1 and 2 of chapter 573 of the 1993 Session Laws are repealed.

**SECTION 4. APPROPRIATION.** There is hereby appropriated out of any moneys in the state highway tax distribution fund in the state treasury, the entire state's share of revenue from the additional tax imposed by sections 1 and 2 of this Act, but not exceeding \$22,500,000, or so much of the sum as may be necessary, plus up to \$43,000,000 of additional federal highway matching funds as defined in sections 1 and 2 of this Act, to the department of transportation for the purpose of providing funds needed to match additional federal highway matching funds and to authorize the expenditure of those funds and federal funds that may become available for highway purposes for the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. EFFECTIVE DATE.** Section 3 of this Act is effective on the day any additional tax under sections 1 and 2 of this Act becomes effective.

**SECTION 6. EXPIRATION DATE.** Sections 1 and 2 of this Act expire December 31, 1997, and after that date are ineffective.

Approved April 7, 1995  
Filed April 7, 1995

## CHAPTER 576

## HOUSE BILL NO. 1134

(Finance and Taxation Committee)

(At the request of the Office of Management and Budget)

## MOTOR VEHICLE FUEL TAX REFUNDS

AN ACT to provide limitations on production incentives for ethanol plants; to amend and reenact section 57-43.1-03.1 of the North Dakota Century Code and section 6 of chapter 404 of the 1991 Session Laws, relating to reductions of refunds of motor vehicle fuels taxes on fuel used for agricultural purposes and the duration of motor vehicle registration fees; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel for agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section must be reduced by ~~two~~ four cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, ~~and the two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, and two cents per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund.~~ Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged ~~two~~ four cents per gallon [3.79 liters] by the dealer and the ~~two~~ four cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 2. Duration and limitation of ethanol plant production incentives. Notwithstanding any other provision of law, an ethanol plant may not receive production incentives except as permitted under this section.

1. An ethanol plant that was in operation before July 1, 1995, may not receive production incentives in the form of direct payments from the state for more than five fiscal years of operation after June 30, 1995. An ethanol plant that begins operation after June 30, 1995, may not receive production incentives in the form of direct payments from the state for more than ten fiscal years of operation. After December 31, 2007, the state may not provide production incentives in the form of direct payments to any ethanol plant.
2. An ethanol plant that was in operation before July 1, 1995, and which produced fewer than fifteen million gallons [56781000 liters] of ethanol in the previous fiscal year may receive up to one million dollars in

production incentives from the state for production in a fiscal year. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more of ethanol in the previous fiscal year and an ethanol plant that begins operation after June 30, 1995, are each eligible to receive an equal share in up to five hundred thousand dollars in production incentives from the state for production in a fiscal year.

**SECTION 3. AMENDMENT.** Section 6 of chapter 404 of the 1991 Session Laws is amended and reenacted as follows:

**SECTION 6. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is effective from July 1, 1991, through June 30, ~~1995~~ 2000, and is thereafter ineffective. Section 3 of this Act is effective for motor vehicle fuel taxes paid from January 1, 1991, through December 31, 1994, and is thereafter ineffective.

**SECTION 4. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is effective for motor vehicle fuel taxes paid from January 1, 1995, through December 31, 1999, and is thereafter ineffective. Section 3 of this Act becomes effective on July 1, 1995.

Approved April 7, 1995

Filed April 7, 1995

## CHAPTER 577

### HOUSE BILL NO. 1257

(Representatives Torgerson, Rennerfeldt, Dobrinski)  
(Senators Goetz, Kinnoin, Urlacher)

## HORIZONTAL DRILLING TAX INCENTIVES

AN ACT to create and enact three new subsections to section 57-51.1-01 and two new subsections to section 57-51.1-03 of the North Dakota Century Code, relating to definitions and exemptions for purposes of the oil extraction tax; to amend and reenact subsection 8 of section 57-51.1-01 and subsection 3 of section 57-51.1-03 of the North Dakota Century Code, relating to stripper wells and oil extraction tax exemptions for certain inactive wells, horizontal reentry wells, and horizontal wells; to provide an effective date; and to declare an emergency.

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

**SECTION 1.** Three new subsections to section 57-51.1-01 of the North Dakota Century Code are created and enacted as follows:

"Horizontal well" means a well with a horizontal displacement of the wellbore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet.

"Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well after March 31, 1995.

"Two-year inactive well" means any well that has not produced oil in more than one month in the two years before the date of application to the industrial commission for certification as a two-year inactive well.

**SECTION 2. AMENDMENT.** Subsection 8 of section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet or less, fifteen barrels per day for wells of a depth of more than six thousand feet but not more than ten thousand feet, and ~~twenty~~ thirty barrels per day for wells of a depth of more than ten thousand feet during any preceding consecutive twelve-month period beginning after December 31, 1972. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

<sup>276</sup> **SECTION 3.** Two new subsections to section 57-51.1-03 of the North Dakota Century Code are created and enacted as follows:

The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.

The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.

**SECTION 4. AMENDMENT.** Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. For a well drilled and completed after April 27, 1987, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well after March 31, 1995, is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.

**SECTION 5. EFFECTIVE DATE.** Sections 1, 3, and 4 of this Act are effective for taxable events occurring after March 31, 1995, and section 2 of this Act is effective for taxable events occurring after June 30, 1995.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 3, 1995  
Filed April 3, 1995

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<sup>276</sup> Section 57-51.1-03 was also amended by section 1 of Senate Bill No. 2150, chapter 579.

**CHAPTER 578****HOUSE BILL NO. 1095**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**OIL EXTRACTION TAX RATES**

AN ACT to amend and reenact section 57-51.1-02 of the North Dakota Century Code, relating to reduced oil extraction tax rates for certain oil production.

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

**SECTION 1. AMENDMENT.** Section 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-02. Imposition of oil extraction tax.** There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted ~~shall be~~ **is** deemed for the purposes of this chapter to be engaged in the activity of extracting that oil.

The rate of tax ~~shall be~~ **is** six and one-half percent of the gross value at the well of the oil extracted, except that ~~for the rate of tax is four percent of the gross value at the well of the oil extracted in the following situations:~~

1. For oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under section 57-51.1-03; ~~for~~;
2. For oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991; ~~for~~;
3. For oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991; ~~for~~;
4. For incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03; ~~or~~
5. For oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03; ~~the rate of tax shall be four percent of the gross value at the well of the oil extracted.~~

However, if the average price of a barrel of crude oil for any consecutive five-month period in any year is thirty-three dollars or more, then the rate of tax for the following months on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted.

However, if after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year, the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project.

Approved March 1, 1995

Filed March 1, 1995

**CHAPTER 579****SENATE BILL NO. 2150**

(Finance and Taxation Committee)

(At the request of the Industrial Commission)

**OIL EXTRACTION TAX EXEMPTIONS**

AN ACT to amend and reenact subdivision a of subsection 5 of section 57-51.1-03 of the North Dakota Century Code, relating to oil exempt from the oil extraction tax; and to declare an emergency.

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

<sup>277</sup> **SECTION 1. AMENDMENT.** Subdivision a of subsection 5 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission ~~during the period beginning after~~ after July 1, 1991, ~~and ending June 30, 1995~~; is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

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

Approved March 21, 1995

Filed March 23, 1995

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<sup>277</sup> Section 57-51.1-03 was also amended by sections 3 and 4 of House Bill No. 1257, chapter 577.



**CHAPTER 580****SENATE BILL NO. 2411**

(Senator O'Connell)

**OIL EXTRACTION TAX EXEMPTION FILING**

AN ACT to create and enact a new section to chapter 57-51.1 of the North Dakota Century Code, relating to the filing of certifications to qualify for certain oil extraction tax exemptions and tax rate reductions; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-51.1 of the North Dakota Century Code is created and enacted as follows:

Stripper well, new well, work-over, and secondary or tertiary project certification for tax exemption or rate reduction - Filing requirement. To receive the benefits of a tax exemption or tax rate reduction, a certification of qualifying well status prepared by the industrial commission must be submitted to the tax commissioner as follows:

1. To receive, from the first day of eligibility, a tax exemption on production from a stripper well property under subsection 2 of section 57-51.1-03, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the stripper well property's qualification period.
2. To receive, from the first day of eligibility, a tax exemption under subsection 3 of section 57-51.1-03 and a rate reduction on production from a new well under section 57-51.1-02, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after a new well is completed.
3. To receive, from the first day of eligibility, a tax exemption under subsection 4 of section 57-51.1-03 and a rate reduction for a work-over well under section 57-51.1-02, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the work-over project is completed.
4. To receive, from the first day of eligibility, a tax exemption under subsection 5 of section 57-51.1-03 and a tax rate reduction under section 57-51.1-02 on production from a secondary or tertiary project, the industrial commission's certification must be submitted to the tax commissioner within the following time periods:
  - a. For a tax exemption, within eighteen months after the month in which the first incremental oil was produced.
  - b. For a tax rate reduction, within eighteen months after the end of the period qualifying the project for the rate reduction.

5. To receive, from the first day of eligibility, a tax exemption or the reduction on production for which any other tax exemption or rate reduction may apply, the industrial commission's certification must be submitted to the tax commissioner within eighteen months of the completion, recompletion, or other qualifying date.

If the industrial commission's certification is not submitted to the tax commissioner within the eighteen-month period provided in this section, then the exemption or rate reduction does not apply for the production periods in which the certification is not on file with the tax commissioner. When the industrial commission's certification is submitted to the tax commissioner after the eighteen-month period, the tax exemption or rate reduction applies to prospective production periods only and the exemption or rate reduction is effective the first day of the month in which the certification is received by the tax commissioner.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 1996.

Approved March 15, 1995  
Filed March 15, 1995

**CHAPTER 581****SENATE BILL NO. 2330**

(Senator Yockim)  
(Representative Tollefson)

**OIL EXTRACTION TAX REVENUE ALLOCATION**

AN ACT to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to allocation of oil extraction tax revenues; and to provide an effective date.

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

<sup>278</sup> **SECTION 1. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07. Allocation of moneys in oil extraction tax development fund.** Moneys deposited in the oil extraction tax development fund must be apportioned quarterly by the state treasurer as follows:

1. Ten percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds, must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
  - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.

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<sup>278</sup> Section 57-51.1-07 was also amended by section 8 of Senate Bill No. 2025; chapter 47.

2. Twenty percent must be allocated as provided in article X, section 24, of the constitution of North Dakota.
3. Ninety Seventy percent must be allocated and credited to the state's general fund for general state purposes.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for tax revenue from oil produced after June 30, 1995.

Approved March 17, 1995

Filed March 20, 1995

## CHAPTER 582

### HOUSE BILL NO. 1377

(Representatives Gorman, Berg, Payne, Wardner)

### MOBILE HOME TAX PERMITS

AN ACT to amend and reenact section 57-55-01.1 of the North Dakota Century Code, relating to tax permits for mobile homes; to repeal section 57-55-02 of the North Dakota Century Code, relating to applications and mobile home taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-55-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-55-01.1. Taxation of and tax permits for mobile homes.** The owner of each mobile home is subject to taxes as determined under this chapter and shall file an application for a mobile home tax permit with the director of tax equalization in the county in which the mobile home is located ~~on or before January tenth of each year or~~ within ten days after the mobile home is ~~purchased~~ acquired, moved, or first moved brought into this state. Application must be made on forms approved by the tax commissioner and furnished by the county director of tax equalization and must contain the necessary information to carry out the provisions of this chapter. A mobile home tax permit may not be issued unless the owner pays the tax and any penalties in full to the county treasurer. Upon payment of the tax ~~to the county treasurer~~, a mobile home tax permit must be issued to the owner of the mobile home. The tax permit is valid throughout the state for the mobile home during the period for which it was issued.

**SECTION 2. REPEAL.** Section 57-55-02 of the North Dakota Century Code is repealed.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after July 31, 1995.

Approved March 21, 1995

Filed March 21, 1995

**CHAPTER 583****HOUSE BILL NO. 1480**  
(Representatives Mahoney, Maragos)  
(Senator Traynor)**MOBILE HOME TAX DISCOUNT PERIOD**

AN ACT to amend and reenact section 57-55-03 of the North Dakota Century Code, relating to the time during which a discount is allowed for payment of taxes on mobile homes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-55-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-55-03. When taxes become due and delinquent - Penalty.**

1. a. The tax imposed in this chapter is due and payable on January tenth of each year or ten days after the mobile home is purchased or first moved into this state. If the tax due for the entire year is paid in full by February fifteenth, the county treasurer shall allow a five percent discount.
- b. ~~If a mobile home is purchased or moved into this state after January tenth and~~ if the tax imposed by this chapter is paid in full within ~~ten~~ thirty days after the mobile home is purchased or moved into this state, the county treasurer shall allow a five percent discount. However, if the tax is not paid within forty days it is subject to a penalty and interest. The penalty is one percent of the tax. The interest is one-half percent of the tax for each full and fractional month of delay.
2. Except as provided in subdivision b of subsection 1, the tax imposed by this chapter may be paid in two equal installments if the amount of the tax due is forty dollars or more. The first installment is due on January tenth and becomes delinquent on March first and is then subject to a penalty of two percent, and on April first an additional penalty of two percent, and on May first an additional penalty of two percent, and on June first an additional penalty of two percent. The second installment is due June first and is delinquent on July first and is then subject to a penalty of two percent, and on August first an additional penalty of two percent, and on September first an additional penalty of two percent, and on October first an additional penalty of two percent. If any tax remains due after January first of the next year, interest is due at the monthly rate of one-half percent of the tax due for each month or fraction of a month until the tax and penalties have been paid in full.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 1995.

Approved March 1, 1995  
Filed March 2, 1995

## CHAPTER 584

### HOUSE BILL NO. 1101

(Representative Timm)

(At the request of the Governor)

## MULTISTATE TAX COMMISSION MEMBERSHIP

AN ACT to amend and reenact sections 57-59-03, 57-59-04, 57-59-05, and 57-59-06 of the North Dakota Century Code, relating to the membership and activities of the multistate tax commission; and to repeal section 57-59-07 of the North Dakota Century Code, relating to the multistate tax compact advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-59-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-03. Membership of multistate tax commission.** ~~The governor shall appoint the member of the multistate tax commission to represent the state of North Dakota from among the persons made eligible by subdivision a of subsection 1 of article VI of the compact; or the head of the state tax department~~ commissioner shall represent the state of North Dakota on the multistate tax commission.

**SECTION 2. AMENDMENT.** Section 57-59-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-04. Designation of an alternate.** ~~The member representing the state of North Dakota on the multistate tax commission~~ state tax commissioner may be represented ~~thereon on the multistate tax commission~~ by an alternate designated by ~~him~~ the state tax commissioner. Any ~~such~~ alternate must be a principal deputy or assistant of the ~~member of the commission in the agency which the member heads~~ state tax commissioner.

**SECTION 3. AMENDMENT.** Section 57-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-05. Legal counsel.** ~~The chief counsel of the legal and research division of the state tax department or his~~ the chief counsel's designee; shall attend the meetings of the multistate tax commission as the legal counsel representing the state of North Dakota as provided for by subdivision a of subsection 1 of article VI of section 57-59-01.

**SECTION 4. AMENDMENT.** Section 57-59-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-06. Selection of representatives to meet with commission member.** ~~The governor, after consultation with representatives of local governments, shall appoint three persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact; or the governor~~ state tax commissioner shall appoint ~~three~~ two persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact; from among persons nominated by the ~~county commissioners' association of counties; county auditors' association; and~~

league of ~~municipalities~~ cities. ~~The member of the commission representing the state of North Dakota,~~ state tax commissioner, and any alternate designated by ~~him~~ the state tax commissioner, shall consult ~~regularly~~ with these appointees, in accordance with subdivision b of subsection 1 of article VI of section 57-59-01. The state tax commissioner shall also consult regularly with the chairman and ranking minority party member of the finance and taxation committees of the senate and house of representatives as provided for in subdivision b of subsection 2 of article VI of section 57-59-01.

**SECTION 5. REPEAL.** Section 57-59-07 of the North Dakota Century Code is repealed.

Approved March 1, 1995

Filed March 1, 1995



# TOWNSHIPS

## CHAPTER 585

### SENATE BILL NO. 2295

(Senators Wogsland, Andrist, Kelsh)  
(Representatives Gulleason, Laughlin, Maragos)

## TOWNSHIP TRANSFER OF FUNDS FOR AMBULANCE SERVICE

AN ACT to create and enact a new subsection to section 58-03-07 of the North Dakota Century Code, relating to the authority of the electors of a township to transfer township funds to a rural ambulance service district.

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

**SECTION 1.** A new subsection to section 58-03-07 of the North Dakota Century Code is created and enacted as follows:

To direct the transfer of township funds to a rural ambulance service district for ambulance service within the township.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 586

### SENATE BILL NO. 2380

(Senators Traynor, O'Connell)  
(Representatives Guleson, Poolman)

## TOWNSHIP ZONING ORDINANCE VIOLATION PENALTIES

AN ACT to amend and reenact section 58-03-14 of the North Dakota Century Code, relating to civil penalties for violations of a township zoning ordinance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-03-14 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-14. Violation of zoning regulations and restrictions - Remedies - Penalties.**

1. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used, in violation of any regulation or restriction made under the authority conferred by sections 58-03-11 through 58-03-15, the proper local authorities of the township or of the municipality in relation to which such zoning regulation or restriction is established, or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceeding:
  - ~~1+~~ a. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
  - ~~2+~~ b. To restrain, correct, or abate such violations;
  - ~~3+~~ c. To prevent the occupancy of the building, structure, or land; or
  - ~~4+~~ d. To prevent any illegal act, conduct, business, or use in or about such premises.
2. If after reasonable notice and opportunity for hearing by the board of township supervisors, a property owner fails to bring a building or structure or the use of land owned by that person into compliance with a regulation or restriction made under sections 58-03-11 through 58-03-15, in addition to any other remedies, the board of township supervisors may impose a civil penalty of up to five hundred dollars against the property owner and the property. The board of township supervisors may also assess the property owner for all costs of the township in bringing the property into compliance or in instituting and prosecuting any appropriate action or proceeding under this section. Any civil penalty or assessment of costs, or both, against a property owner constitute a lien on the property and must be charged against the property and become a part of the taxes against the property for the

ensuing year and must be collected in the same manner as other real estate taxes are collected and placed to the credit of the township.

Approved March 27, 1995

Filed March 28, 1995

# WATERS

## CHAPTER 587

### SENATE BILL NO. 2463

(Senators Streibel, Heitkamp, Kinnoin, Langley, Traynor,  
Urlacher)

## STATEWIDE WATER DEVELOPMENT PROGRAM

AN ACT to provide a directive concerning the impending flood disaster in the Devils Lake basin and a statement of the legislative assembly concerning water development in North Dakota; to provide an appropriation; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. DEVILS LAKE FLOOD EMERGENCY.** The legislative assembly recognizes the impending flood disaster facing the Devils Lake basin in 1995. The governor shall prepare the national guard for mobilization to combat the flood emergency if flood conditions develop in the Devils Lake basin as anticipated. The state engineer shall develop contingency plans to contain and minimize the anticipated flood damage in the Devils Lake basin.

**SECTION 2. STATEWIDE WATER DEVELOPMENT PROGRAM.** The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program. The governor, congressional delegation, state water commission, game and fish department, state department of health and consolidated laboratories, state engineer, Garrison Diversion Conservancy District, North Dakota water users association, North Dakota water resource districts association, and North Dakota rural water systems association shall undertake a joint effort to develop a comprehensive statewide water development program and investigate and recommend a program or programs for funding and financing this comprehensive statewide water development program. This program must be designed to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and its claim to its proper share of Missouri River water. The comprehensive statewide water development program must be designed to:

1. Complete the southwest pipeline project for distribution of water to cities and rural areas in southwestern North Dakota;
2. Develop the northwest area water supply program for distribution of water to cities and rural areas in northwestern and north central North Dakota;
3. Complete a connecting link between the McClusky canal and the New Rockford canal;
4. Construct an inlet and outlet to Devils Lake;

5. Prevent damage to transportation routes, residential and rural structures, sewer drain fields, private wells, and agricultural land surrounding Devils Lake;
6. Deliver Missouri River water to the Red River valley where approximately one-third of the population of North Dakota lives and water is needed for industrial development;
7. Develop, design, and construct additional water management facilities necessary for the full utilization and management of water resources throughout the state, including such projects as Souris River flood control, Sheyenne River flood control, local water-based recreation projects, and other local water needs.

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys from special funds derived from other income, to the state water commission for the purpose of defraying the expenses of a Devils Lake office, for the biennium beginning July 1, 1995, and ending June 30, 1997, as follows:

Salaries and wages	\$ 95,200
Operating expenses	17,000
Equipment	5,000
Total special funds appropriation	<u>\$117,200</u>

**SECTION 4. RESOURCES TRUST FUND - TRANSFER.** The amount of \$87,900, or so much of the funds as may be necessary, included in the special funds appropriation in section 3 of this Act is from the resources trust fund and shall be transferred to the state water commission for the purposes of this Act during the biennium beginning July 1, 1995, and ending June 30, 1997.

**SECTION 5. EXPIRATION DATE.** This Act is effective through June 30, 1997, and after that date is ineffective.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 1995

Filed April 13, 1995

## CHAPTER 588

## SENATE BILL NO. 2204

(Finance and Taxation Committee)

(At the request of the State Water Commission)

## WATER DEVELOPMENT REVENUE BONDS

AN ACT to create and enact a new section to chapter 61-02 of the North Dakota Century Code, relating to definitions and revenues and funds available to pay water development revenue bonds; to amend and reenact sections 61-02-46, 61-02-48, 61-02-51, 61-02-52, 61-02-53, 61-02-54, 61-02-55, 61-02-56, 61-02-57, 61-02-58, 61-02-61, 61-02-62, 61-02-63, 61-02-64, 61-02-64.1, and 61-24.6-01 of the North Dakota Century Code, relating to water development revenue bonds; and to repeal sections 61-02-66, 61-02-67, and 61-02-68 of the North Dakota Century Code, relating to bond funds and payments.

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

SECTION 1. AMENDMENT. Section 61-02-46 of the North Dakota Century Code is amended and reenacted as follows:

61-02-46. Commission may issue bonds - ~~Principal and interest~~ - ~~How paid~~  
Legislative authorization - Payment restricted.

1. The commission may provide by resolution, at one time or from time to time, for the issuance of state water ~~commission~~ development revenue bonds for the purpose of paying the cost of any one or more of the works authorized by this chapter ~~and for the purpose of acquiring lands and preparing and developing the same for irrigation. The principal and interest of such bonds shall be payable from the accounts established by the commission in the funds provided for in this chapter. The commission may provide for the refunding and refinancing of the bonds from time to time as often as it is advantageous and in the public interest to do so.~~
2. If the principal amount of bonds to be issued for any one works pursuant to this chapter will exceed in the aggregate two million dollars, no bonds may be issued to finance that works unless the legislative assembly authorizes the works and declares the works to be in the public interest.
3. The bonds Bonds issued under this chapter shall not be in any way a debt or liability of this state and shall not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all such bonds shall be payable solely from funds or revenues pledged or available for their payment as authorized in this chapter. ~~Such~~ The bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the commission, other than funds or revenues pledged for their payment. Each bond shall recite in substance that the bond, including interest thereon, is payable solely from the funds or revenues pledged to the payment thereof, and that the

bond does not constitute a debt of this state or of the commission within the meaning of any constitutional or statutory limit.

**SECTION 2. AMENDMENT.** Section 61-02-48 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-48. Commission to determine interest rate, form, denomination, and execution of bonds.** The commission shall determine the rate of interest bonds issued under this chapter shall bear, the time or times of payment of such interest, the form of the bonds ~~whether registered or coupon~~, and the manner of executing the bonds ~~and coupons; if any~~, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereon, which may be at any bank or trust company within or without this state. The bonds shall be sold ~~by the commission~~ at public sale or private sale and at such price or prices as the commission shall determine.

**SECTION 3. AMENDMENT.** Section 61-02-51 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-51. How bonds may be secured.** The bonds provided for in this chapter may be secured by works or lands, ~~as the case may be~~, and the income derived therefrom, and other funds as the commission may pledge, and the funds received from the sale or disposal of water and from the operation, lease, sale, or other disposition of the works, lands, property, and facilities to be acquired out of the proceeds of ~~such~~ the bonds and as provided in this chapter.

**SECTION 4. AMENDMENT.** Section 61-02-52 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-52. Commission may provide for registration of bonds.** Provision may be made by the commission for the registration of any of the bonds ~~in the name of the owner as to the principal alone or as to both principal and interest~~ as provided by chapter 21-03.1.

**SECTION 5. AMENDMENT.** Section 61-02-53 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-53. Issuance and sale of bonds - Proceeds from sale - Use.** The bonds authorized under this chapter may be issued and sold from time to time, and in amounts determined by the commission. The commission may, subject to the provisions of section 61-02-48, ~~sell~~ provide for the sale of the bonds in such manner and for such price as it may determine to be for the best interests of the state. The proceeds of the bonds shall be used solely for the payment of the cost of works authorized by this chapter ~~or the cost of acquiring lands and preparing or developing such lands for irrigation; as the case may be plus costs of issuance, interest during construction, and any reasonably required reserve funds~~, and shall be paid out in such manner and under such restrictions as the commission may provide. ~~The bonds may be sold at private sale without notice or at public sale after publication of the notice of sale by the commission.~~

**SECTION 6. AMENDMENT.** Section 61-02-54 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-54. Resolution providing for issuance of bonds - Separate series of bonds.** Each resolution providing for the issuance of bonds provided for in this chapter shall set forth the purpose or purposes for which the bonds are to be issued,

the provisions for the payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds. ~~The bonds authorized by each such resolution shall constitute a separate series. The revenues from works or projects and such other funds as the commission may determine, may be pledged to secure one or more series of bonds. The bonds of each series shall be identified by a series of letters, and may be sold and delivered at one time or from time to time.~~

**SECTION 7. AMENDMENT.** Section 61-02-55 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-55. Issuance of temporary bonds in lieu of definitive bonds.** Prior to the preparation of definitive bonds, the commission may issue or provide for the issuance of temporary bonds, in registered or coupon form, exchangeable for definitive bonds when the definitive bonds have been executed and are available for delivery. Temporary bonds may be issued without any other proceedings or the happening of any other condition or thing specified and required by this chapter, except that if legislative authorization is required for the issuance of the definitive bonds pursuant to section 61-02-46, the authorization must be received before the temporary bonds may be issued.

**SECTION 8. AMENDMENT.** Section 61-02-56 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-56. Guarantying and insuring the payment of interest and principal on revenue bonds** Bond guaranty or insurance - Method. Whenever the commission shall find it necessary to insure or guaranty guarantee the payment of all or a part of the principal or interest of any series of water commission revenue bonds, in order to sell or market such bonds; it may enter into an agreement to pledge, hypothecate, obligate, place under trust indenture, or agree to deposit in a trust fund, moneys now or hereafter appropriated, to guaranty guarantee and insure the payment of the interest on and principal of state water commission revenue the bonds. From and with moneys thus appropriated, the commission may guaranty guarantee or insure, or agree to pay, or pay the interest on and principal of such the bonds. The appropriation of such funds, and the use thereof by the commission to guaranty guarantee or insure the payment of any of its bonds, shall not be construed to be pledging the credit of the state of North Dakota nor the guarantying guaranteeing by the state of any water commission revenue bonds. The commission may also enter into an agreement with a private bond insurer or with a bank or other credit enhancement provider for bond insurance, a guaranty, a letter of credit, or any other credit enhancement that the commission may find to be advantageous or necessary to insure or guarantee the payment of the interest on or the principal of the bonds. The cost of any credit enhancement may be paid with bond proceeds or other funds available for that purpose.

**SECTION 9. AMENDMENT.** Section 61-02-57 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-57. Moneys appropriated to pay interest and principal of bonds available as a revolving fund.** Moneys appropriated to enable the state water commission to guaranty guarantee the payment of the interest or principal of its bonds shall be available to the commission as a continuing revolving fund, and moneys so appropriated, and any unexpended balances thereof, including interest on the moneys and unexpended balances, shall not revert to the state general fund at the end of any biennial fiscal period but shall be available for use by the commission to insure and guaranty guarantee the payment of, or pay, to the extent provided in



this chapter, the payment of interest and principal of its bonds until otherwise required by law.

**SECTION 10. AMENDMENT.** Section 61-02-58 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-58. Lien upon bond proceeds.** All moneys received from bonds of any series issued pursuant to ~~the provisions of this chapter shall be placed in a separate account in the construction fund and shall be used solely for the purpose of paying the cost of the works or projects for the construction of which such the bonds have been issued, or for the purpose of acquiring lands and preparing and developing the same for irrigation; or for the purpose of paying costs of issuance, interest during construction, and establishing any reasonably required reserve funds. There shall be a lien upon such moneys, until so used in favor of the holders of the bonds or the trustee provided for in this chapter in respect to such the bonds.~~

**SECTION 11. AMENDMENT.** Section 61-02-61 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-61. Resolution or indenture may contain provisions protecting bondholders - Expenses incurred in carrying out indenture.** Either the resolution providing for the issuance of bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper; ~~not in violation of law, including covenants setting forth the duties of the state and the commission in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works, and the custody, safeguarding, and application of all moneys; and may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the commission. Such resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual claims for relief of bondholders as is customary in trust indentures, deeds of trust, and mortgages securing bonds. No enumeration of particular powers granted may be construed to impair any general grant of power contained in this chapter. All expenses incurred in carrying out such the provisions of the resolution or trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the works affected by such the resolution or trust indenture.~~

**SECTION 12. AMENDMENT.** Section 61-02-62 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-62. Powers of commission in issuance of bonds.** In connection with the issuance of any bonds for the purpose of paying in whole or in part, or as supplemented by a grant from the United States or any instrumentality or agency thereof, the cost of any works or project, or in order to secure the payment of ~~such the bonds, the commission may:~~

1. Pledge all or any part of the income, profit, and revenue of ~~such the~~ works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale, or other disposition of all or any part of ~~such the~~ works or project, or other funds as the commission may determine ~~and may covenant to pay such income, profit, revenue, and funds into the revenue bond payment fund.~~

2. Covenant against pledging all or any part of the income, profit, and revenue of ~~such the~~ works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale, or other disposition of all or any part of ~~such the~~ works or project.
3. Covenant against mortgaging all or any part of ~~such the~~ works or project or against permitting or suffering any lien thereon.
4. Covenant to fix and establish such prices, rates, and charges for water and other services made available in connection with ~~such the~~ works or project as to provide at all times funds together with other funds the commission may pledge which will be sufficient:
  - a. To pay all costs of operation and maintenance of ~~such the~~ works or project together with necessary repairs thereto;
  - b. To meet and pay the principal and interest of all ~~such the~~ bonds as they severally become due and payable; and
  - c. To create such reserves for the principal and interest of all ~~such the~~ bonds and for the meeting of contingencies in the operation, repair, replacement, and maintenance of ~~such the~~ works or project as the commission shall determine.
5. Make such further covenants as to ~~such~~ prices, rates, and charges as the commission shall determine.
6. Create special funds, in addition to those required by this chapter, for the meeting of contingencies in the operation and maintenance of ~~such the~~ works or project and to determine the manner in which, and the depository or depositories in which, ~~such the~~ funds shall be deposited and the manner in which the same shall be secured. Any bank or trust company incorporated under the laws of this state may act as ~~such the~~ depository and shall furnish such indemnifying bonds or pledge such securities as may be required by the commission on all deposits exceeding the sum of five thousand dollars.
7. Provide for the replacement of lost, destroyed, or mutilated bonds.
8. Covenant against extending the time for the payment of the principal or interest on any of ~~such~~ bonds, directly or indirectly, by any means or in any manner.
9. Prescribe and covenant as to the events of default and the terms and conditions upon which any or all of ~~such the~~ bonds shall become, or may be declared, due before maturity, and as to the terms and conditions upon which ~~such a~~ declaration and its consequences may be waived.
10. Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.
11. Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay ~~such the~~ bonds, or to foreclose any trust indenture in relation thereto, provide for the powers and duties of ~~such the~~ trustee, or

- trustees, and limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any ~~such~~ covenant or exercise the right of foreclosure.
12. Make covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure ~~such the~~ bonds, or, in the absolute discretion of the commission ~~may, to make such the~~ bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated or expressly authorized in this chapter.
  13. Do all things in the issuance of ~~such the~~ bonds, and in providing for their security, that may not be inconsistent with the Constitution of North Dakota.

**SECTION 13. AMENDMENT.** Section 61-02-63 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-63. Mortgage of commission - Contents - Purchaser at foreclosure sale - Rights.** ~~In the discretion of the commission; any trust indenture executed by it as security for a series of bonds issued by it may contain provisions for conveying in trust or mortgaging the works, the project, or any part of such works or project, including all water rights, which are a part thereof, constructed with the proceeds of such bonds or with such proceeds as supplemented by the proceeds of a grant to aid in financing such construction from the United States of America; or any instrumentality or agency thereof; or any other revenues or funds; and may be in such form; and with such rights, remedies; and provisions as is customary in trust indentures, deeds of trust, and mortgages securing bonds. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project financed with bonds issued by the commission as authorized by this chapter shall obtain title to such the works or project free from any trust or other obligation of the commission, the state of North Dakota, or the public thereof, as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in such the works or project for sale, rental distribution, or other beneficial use.~~

**SECTION 14. AMENDMENT.** Section 61-02-64 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-64. Funds Fund created by commission - Depository.** ~~The commission shall have three funds a fund to be known as the "contract fund"; the "construction fund"; and the "revenue bond payment fund". The moneys in each such the contract fund shall be deposited in the state treasury. Each The contract fund shall have such accounts as the commission may determine. The use or disposition of such accounts, including the pledging thereof for the security of and payment on one or more series of bonds, shall be determined by the commission.~~

**SECTION 15. AMENDMENT.** Section 61-02-64.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**61-02-64.1. Contract fund - Purpose - Reimbursements to be deposited with the state treasurer.** All contractual obligations of the commission, including obligations with respect to any works financed with bonds issued under this chapter, and excepting salaries and expenses of commission employees and the cost of any supplies, materials, and equipment not related to works financed with bonds, shall be paid from the contract fund. The moneys in the contract fund shall be paid out

or disbursed in such manner as may be determined by the commission. Any moneys paid to the ~~state water~~ commission by any department, agency, or political subdivision of this or another state or of the United States or any person, corporation, or limited liability company to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, shall be deposited with the state treasurer and are hereby appropriated out of the state treasury, and shall be credited to the contract fund or held pursuant to the terms of the resolution or trust indenture of the commission adopted or entered into under this chapter.

**SECTION 16.** A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Revenues and funds available to pay bonds. Bonds issued under this chapter are payable solely from:

1. Revenues to be received by the commission from the operation of a works financed with the bonds.
2. Any other revenues available to the commission.

<sup>279</sup> **SECTION 17. AMENDMENT.** Section 61-24.6-01 of the 1993 Supplement to the North Dakota Century Code, as amended by section 1 of Senate Bill No. 2148, as approved by the fifty-fourth legislative assembly, is amended and reenacted as follows:

**61-24.6-01. Findings and declaration of policy.** It is hereby found and declared by the legislative assembly that many areas and localities in northwestern North Dakota do not enjoy safe drinking water, and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found and declared that other areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of northwestern North Dakota with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project be pursued that would supply and distribute water to the people of northwestern North Dakota through a pipeline transmission and delivery system for purposes including domestic, rural water districts, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water district, and municipal uses. In furtherance of this public purpose, the ~~industrial~~

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<sup>279</sup> Section 61-24.6-01 was also amended by section 1 of Senate Bill No. 2148, chapter 598.

state water commission may ~~issue~~ provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of the project.

The provisions of this chapter may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary to those rights, powers, duties, and functions.

**SECTION 18. REPEAL.** Sections 61-02-66, 61-02-67, and 61-02-68 of the North Dakota Century Code are repealed.

Approved April 6, 1995

Filed April 6, 1995

**CHAPTER 589****HOUSE BILL NO. 1114**

(Natural Resources Committee)

(At the request of the State Water Commission)

**SECTION 404 PROGRAM EFFECTIVE DATE**

AN ACT to amend and reenact section 12 of chapter 594 of the 1993 Session Laws, relating to the effective date of the assumption of the section 404 program of the Clean Water Act by the state.

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

**SECTION 1. AMENDMENT.** Section 12 of chapter 594 of the 1993 Session Laws is amended and reenacted as follows:

**SECTION 12. EFFECTIVE DATE.** This Act becomes effective on the date the state engineer certifies to the governor and the secretary of state that the state has received approval from the United States environmental protection agency to assume the program under section 404 of the Clean Water Act and that adequate funds have been made available from the federal government or other sources to fund the program established pursuant to this Act, as determined by the state engineer and approved by the emergency commission legislative assembly. The secretary of state shall forward a copy of the state engineer's certification to the legislative council, with a notation indicating the effective date of this Act.

Approved March 1, 1995

Filed March 1, 1995

**CHAPTER 590****SENATE BILL NO. 2145**

(Natural Resources Committee)  
(At the request of the State Engineer)

**WATER PERMIT APPLICATION FEE REFUNDS**

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to the authority of the state engineer to refund water permit application fees.

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

**SECTION 1.** A new section to chapter 61-04 of the North Dakota Century Code is created and enacted as follows:

**Refund of water permit application fees.** The state engineer may refund a water permit application fee, upon the request of the applicant, if the application is withdrawn by the applicant, and:

1. The state engineer has not published notice of the application; or
2. The state engineer determines other good and sufficient cause exists to refund the application fee.

Approved March 7, 1995  
Filed March 7, 1995

## CHAPTER 591

### HOUSE BILL NO. 1115

(Agriculture Committee)  
(At the request of the State Engineer)

## IRRIGATION DISTRICT ELECTIONS

AN ACT to amend and reenact section 61-05-03 of the North Dakota Century Code, relating to votes of electors of irrigation districts.

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

**SECTION 1. AMENDMENT.** Section 61-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-03. Votes of electors - Number permissible.** Any elector owning twenty acres [8.09 hectares] or less but not less than five acres [2.02 hectares], subject to assessments for construction or other costs within a proposed or existing district, shall have one vote. Any elector owning more than twenty acres [8.09 hectares] subject to such assessments within any irrigation district which will receive all or a portion of its water supply from a federal reclamation or irrigation project shall have one additional vote for each additional twenty acres [8.09 hectares] or major fraction thereof; ~~but no elector shall be entitled to cast.~~ However, the total votes any elector is entitled to must be determined based on the number of acres [hectares] the elector is entitled to irrigate pursuant to the Reclamation Reform Act of 1982 [Pub. L. 97-293; 96 Stat. 1263; 43 U.S.C. 390aa et seq.] and may not exceed more than eight ~~thirty-five percent of the total votes eligible to be cast in any district election~~ regardless of the number of acres [hectares] of land owned by the elector in the district. Any elector owning more than twenty acres [8.09 hectares] subject to assessments within any existing or proposed irrigation district which does not receive any of its water supply from a federal reclamation or irrigation project shall have one additional vote for each additional twenty acres [8.09 hectares] or major fraction thereof, but no elector shall be entitled to cast more than thirty-five percent of the total votes eligible to be cast in any district election regardless of the number of acres [hectares] of land owned by elector in the district.

Approved March 14, 1995  
Filed March 14, 1995



## CHAPTER 592

## HOUSE BILL NO. 1187

(Representatives Aarsvold, Gerntholz, Shide)  
(Senators G. Nelson, Traynor, Kelsh)

## DRAIN FUND ACCUMULATION

AN ACT to amend and reenact sections 61-16.1-45 and 61-21-46 of the North Dakota Century Code, relating to accumulation of drain funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-45 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-45. Maintenance of drainage projects. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for ~~such~~ the maintenance ~~shall~~ may not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands benefited by the drain. The district ~~may~~, at its own discretion, may utilize either of the following methods for levying special assessments for ~~such~~ the maintenance:

1. Agricultural lands ~~which~~ that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district ~~shall~~ must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre [.40 hectare]. Nonagricultural property ~~shall~~ must be assessed ~~such~~ the sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.
2. Agricultural lands ~~shall~~ must be assessed uniformly throughout the entire assessed area. Nonagricultural property ~~shall~~ must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of ~~such~~ the nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing ~~such~~ the drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by ~~such~~ the maximum permissible levy for ~~two~~ four years.

If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount ~~which can~~ that may be levied by the board in any ~~two-year~~ four-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 ~~prior to~~ before obligating the district for ~~such~~ the costs.

**SECTION 2. AMENDMENT.** Section 61-21-46 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**61-21-46. Maximum levy - Accumulation of fund.** The levy in any year for cleaning out and repairing a drain may not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands in the drainage district.

1. Agricultural lands ~~which that~~ carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar and fifty cents per acre [.40 hectare]. Nonagricultural property must be assessed ~~such the~~ sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of ~~such the~~ nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing ~~such the~~ drain, the board may accumulate a fund in an amount not exceeding the sum produced by ~~such the~~ maximum permissible levy for ~~two~~ four years. If the cost of, or obligation for, the cleaning and repair of any drain ~~shall exceed exceeds~~ the total amount ~~which that~~ can be levied by the board in any ~~two-year four-year~~ period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 ~~prior to before~~ obligating the district for ~~such the~~ costs.

Approved March 24, 1995  
Filed March 27, 1995

**CHAPTER 593**

**SENATE BILL NO. 2138**

(Senator Urlacher)

(At the request of the Governor)

**GARRISON DIVERSION MITIGATION AND  
ENHANCEMENT LANDS COMMISSION ELIMINATED**

AN ACT to repeal chapter 61-24.1 of the North Dakota Century Code, relating to the Garrison Diversion Mitigation and Enhancement Lands Commission.

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

**SECTION 1. REPEAL.** Chapter 61-24.1 of the North Dakota Century Code is repealed.

Approved March 7, 1995

Filed March 7, 1995

**CHAPTER 594****SENATE BILL NO. 2146**

(Natural Resources Committee)

(At the request of the State Water Commission)

**STATE WATER COMMISSION PROPERTY SALE**

AN ACT to amend and reenact section 61-24.3-10 of the North Dakota Century Code, relating to the authority of the state water commission to sell property not needed for the southwest pipeline project.

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

**SECTION 1. AMENDMENT.** Section 61-24.3-10 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-10. Commission to construct, operate, and maintain southwest pipeline project - Rules made by commission.** The commission shall have the authority to:

1. Construct the southwest pipeline project as provided in this chapter.
2. Operate and maintain, or provide for the operation and maintenance of the southwest pipeline project.
3. Exercise all express and implied rights, powers, and authorities, including all powers and authorities granted in chapter 61-02, necessary to carry out the provisions and purposes of this chapter.
4. Make and enforce orders, rules, and bylaws for the operation and maintenance of the southwest pipeline project.
5. Sell, transfer, or exchange property acquired for the southwest pipeline project provided the commission determines the property is not necessary for the operation, maintenance, or construction of the southwest pipeline project. For a period of sixty days the property must first be offered for sale, transfer, or exchange to the current owner of the surrounding property from which the property was obtained. Any parcel of property sold, transferred, or exchanged under this section may not exceed two acres [.81 hectare]. Sections 54-01-05.2 and 54-01-05.5 do not apply to the sale, transfer, or exchange of property pursuant to this subsection.

Approved March 17, 1995

Filed March 20, 1995

**CHAPTER 595****SENATE BILL NO. 2203**

(Finance and Taxation Committee)

(At the request of the State Water Commission)

**SOUTHWEST WATER AUTHORITY FUNDS**

AN ACT to create and enact four new sections to chapter 61-24.5 of the North Dakota Century Code, relating to the operation and maintenance fund and the replacement fund of the southwest water authority; to amend and reenact sections 61-24.3-14, 61-24.3-15, 61-24.3-16, and 61-24.3-17 of the North Dakota Century Code, relating to the operation and maintenance fund and reserve fund for replacement for the southwest pipeline project; to provide for the transfer of equipment; to provide an appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 61-24.3-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-14. Operation and maintenance fund.** To identify and distinguish the revenues received by the commission from water user entities for operation and maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project operation and maintenance fund. All moneys received by the state treasurer from the commission, whether from payments made by water user entities for operation and maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of operation and maintenance of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by him the state treasurer only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in said fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

**SECTION 2. AMENDMENT.** Section 61-24.3-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-15. Revenues for operation and maintenance - Deposit - Use.** Money derived and received by the commission from water user entities for operation and maintenance of the southwest pipeline project shall be deposited by the commission in the operation and maintenance fund, and shall be used for no purposes other than to pay for costs and expenditures for operation and maintenance of the southwest pipeline project.

**SECTION 3. AMENDMENT.** Section 61-24.3-16 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-16. Reserve fund for replacement.** To identify and distinguish the revenues received by the commission from water user entities for replacement and extraordinary maintenance of the southwest pipeline project, there shall be

maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project reserve fund for replacement. All moneys received by the state treasurer from the commission, whether from payments made by water user entities for replacement and extraordinary maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to replacement of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by ~~him~~ the state treasurer only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in the fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

**SECTION 4. AMENDMENT.** Section 61-24.3-17 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-17. Revenues for replacement - Deposit - Use.** Money derived and received by the commission from water user entities for replacement and extraordinary maintenance of the southwest pipeline project shall be deposited by the commission in the reserve fund for replacement, and shall be used for no purposes other than to pay for replacement or extraordinary maintenance of works which are part of or associated with the southwest pipeline project.

**SECTION 5.** A new section to chapter 61-24.5 of the North Dakota Century Code is created and enacted as follows:

Operation and maintenance fund. To identify and distinguish the revenues received by the southwest water authority from water user entities for operation and maintenance of the southwest pipeline project, the southwest water authority shall maintain a fund designated as the southwest pipeline project operation and maintenance fund. All moneys received by the southwest water authority, whether from payments made by water user entities, or otherwise, for operation and maintenance of the southwest pipeline project must be by law or by other authoritative designation made applicable to the payment of operation and maintenance of the southwest pipeline project, must be kept in the fund distinct from all other moneys, and must be disbursed only for the particular purpose or purposes for which the moneys were received.

**SECTION 6.** A new section to chapter 61-24.5 of the North Dakota Century Code is created and enacted as follows:

Revenues for operation and maintenance - Deposit - Use. Money derived and received by the southwest water authority from water user entities for operation and maintenance of the southwest pipeline project must be deposited by the southwest water authority in the operation and maintenance fund and must be used to pay for costs and expenditures for operation and maintenance of the southwest pipeline project.

**SECTION 7.** A new section to chapter 61-24.5 of the North Dakota Century Code is created and enacted as follows:

Reserve fund for replacement. To identify and distinguish the revenues received by the southwest water authority from water user entities for replacement and extraordinary maintenance of the southwest pipeline project, there must be maintained a fund to be designated as the southwest pipeline project reserve fund for replacement. All moneys received by the southwest water authority, whether from

payments made by water user entities, or otherwise, for replacement and extraordinary maintenance of the southwest pipeline project, which are by law or by other authoritative designation made applicable to replacement of the southwest pipeline project, must be kept by the southwest water authority in the fund distinct from all other moneys and may be disbursed only for the particular purpose for which the moneys were received.

**SECTION 8.** A new section to chapter 61-24.5 of the North Dakota Century Code is created and enacted as follows:

Revenues for replacement - Deposit - Use. Money derived and received by the southwest water authority from water user entities for replacement and extraordinary maintenance of the southwest pipeline project must be deposited by the southwest water authority in the reserve fund for replacement and must be used to pay for replacement or extraordinary maintenance of works that are part of or associated with the southwest pipeline project.

**SECTION 9. TRANSFER OF EQUIPMENT TO THE SOUTHWEST WATER AUTHORITY.** The commission may transfer all or a part of the equipment acquired by the state for the southwest pipeline project to the southwest water authority.

**SECTION 10. TRANSFER AND APPROPRIATION.** The ending balances in the operation and maintenance fund established pursuant to section 61-24.3-14 and the reserve fund for replacement established pursuant to section 61-24.3-16 are hereby appropriated and may be transferred to the southwest water authority. Upon notification from the state engineer, the state treasurer shall transfer the amount, not to exceed the amount appropriated, designated by the state engineer from these funds to the southwest water authority.

**SECTION 11. EFFECTIVE DATE.** Sections 9 and 10 of this Act become effective on the date the state engineer certifies to the state treasurer that the southwest pipeline project has been transferred to the southwest water authority for operation and maintenance.

Approved March 24, 1995  
Filed March 27, 1995

**CHAPTER 596****SENATE BILL NO. 2450**

(Senators Urlacher, Christmann)

(Representatives Brown, Galvin, Jacobs, Mahoney)

**SOUTHWEST PIPELINE SERVICE EXTENSION**

AN ACT to create and enact a new section to chapter 61-24.3 of the North Dakota Century Code, relating to the southwest pipeline project.

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

**SECTION 1.** A new section to chapter 61-24.3 of the North Dakota Century Code is created and enacted as follows:

**Authorization of facilities - Water service areas.** Notwithstanding the plans and specifications of state water commission project no. 1736, as authorized in this chapter, the state water commission may include as part of the southwest pipeline project the delivery of water from southwest pipeline facilities to areas in Dunn County, Mercer County, and Oliver County and plan, design, integrate, incorporate, construct, operate, and maintain necessary facilities for this purpose as part of the southwest pipeline project, consistent with this chapter. The exercise of this authority must be in the manner and time the commission deems appropriate.

Approved March 15, 1995

Filed March 15, 1995



## CHAPTER 597

### HOUSE BILL NO. 1417

(Representatives Jacobs, Drovdal, Hagle)  
(Senators Heitkamp, Urlacher)

## SOUTHWEST WATER AUTHORITY TAXING AUTHORITY

AN ACT to amend and reenact section 61-24.5-10 of the North Dakota Century Code, relating to the taxing authority of the southwest water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 61-24.5-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-24.5-10. District budget - Tax levy. ~~Beginning in 1991, and~~ For each ~~taxable year thereafter, through December 31, 1996~~ 2006, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. ~~The power to levy a tax does not extend beyond December 31, 1996.~~ All moneys collected pursuant to the levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, certificates of deposit guaranteed or insured by the United States or an instrumentality or agency thereof, bonds or certificates of indebtedness of the state of North Dakota, or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-16.1-11.

Approved March 21, 1995

Filed March 23, 1995

**CHAPTER 598****SENATE BILL NO. 2148**

(Natural Resources Committee)

(At the request of the State Water Commission)

**NORTHWEST AREA WATER SUPPLY REVENUE  
BONDS**

AN ACT to amend and reenact section 61-24.6-01 of the North Dakota Century Code, relating to northwest area water supply project water development revenue bonds.

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

<sup>280</sup> **SECTION 1. AMENDMENT.** Section 61-24.6-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-01. Findings and declaration of policy.** It is hereby found and declared by the legislative assembly that many areas and localities in northwestern North Dakota do not enjoy safe drinking water, and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found and declared that other areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of northwestern North Dakota with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project be pursued that would supply and distribute water to the people of northwestern North Dakota through a pipeline transmission and delivery system for purposes including domestic, rural water districts, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water district, and municipal uses. In furtherance of this public purpose, the industrial commission may issue bonds in accordance with chapter 61-02 to finance the costs of the project.

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<sup>280</sup> Section 61-24.6-01 was also amended by section 17 of Senate Bill No. 2204, chapter 588.

The provisions of this chapter may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary to those rights, powers, duties, and functions.

Approved March 7, 1995

Filed March 7, 1995

## CHAPTER 599

## HOUSE BILL NO. 1305

(Representative DeKrey)  
(Senators Wanzek, Wogsland)

## NO NET LOSS OF WETLANDS LAW REPEAL

AN ACT to amend and reenact sections 61-32-03 and 61-32-07 of the North Dakota Century Code, relating to drainage permits and closing drains; and to repeal sections 61-32-01, 61-32-02, 61-32-04, 61-32-05, 61-32-06, 61-32-09, and 61-32-11 of the North Dakota Century Code, relating to wetlands.

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

SECTION 1. AMENDMENT. Section 61-32-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-03. Permit to drain waters required - ~~Replacement of wetlands -~~ **Downstream impacts - Penalty.** Any person, before draining water from a wetland pond, slough, or lake, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the wetland pond, slough, or lake for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to the state engineer for final approval. A permit may not be granted until the state water resources policy has been considered and an investigation discloses that the quantity of water which will be drained from the wetland pond, slough, or lake, or any series thereof, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. ~~In addition to the above requirements of this section, the state engineer and the director must jointly find that the wetland acres proposed to be drained will be replaced by an equal acreage of replacement wetlands, or through debits to the wetland bank as provided in section 61-32-05, before any permit for drainage may be approved by the state engineer or water resource board. The provisions of this~~ This section does not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer; ~~for which mitigation is required as part of the project.~~

Any person draining, or causing to be drained, water of a wetland pond, slough, or lake, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, and is guilty of an infraction; and is required to restore the wetland so drained in accordance with sections 61-32-01 through 61-32-11. The state engineer may adopt rules for temporary permits for emergency drainage. When temporary

ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.37 hectares] may be drained without first securing a permit.

**SECTION 2. AMENDMENT.** Section 61-32-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints.** Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. ~~A complaint must be filed on a form made available by the state engineer.~~ Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within ~~such~~ a reasonable time as the board determines, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under ~~the provisions of~~ this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If, after the first complaint, in the opinion of the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint against the complainant.

**SECTION 3. REPEAL.** Sections 61-32-01, 61-32-02, 61-32-04, 61-32-05, 61-32-06, 61-32-09, and 61-32-11 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved April 3, 1995  
Filed April 3, 1995

**CHAPTER 600****HOUSE BILL NO. 1113**

(Natural Resources Committee)  
(At the request of the State Engineer)

**SOVEREIGN LANDS ADVISORY BOARD MEETINGS**

AN ACT to amend and reenact subsection 3 of section 61-33-09 of the North Dakota Century Code, relating to meetings of the sovereign lands advisory board.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 61-33-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The board shall meet at least ~~four times~~ once a year or at the call of the state engineer or two or more members of the board. The board shall meet at the office of the state engineer; or at any other place decided upon by the board.

Approved March 1, 1995

Filed March 1, 1995

## CHAPTER 601

### HOUSE BILL NO. 1317

(Representatives Belter, Gerntholz, Aarsvold)  
(Senators Heitkamp, Urlacher, Traynor)

## WATER DISTRICTS

AN ACT to create and enact chapter 61-35 of the North Dakota Century Code, relating to water district organization, finance, bond issuance, special assessments, and projects.

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

**SECTION 1.** Chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

**61-35-01. Definitions.** As used in this chapter:

1. "Auditor" means the county auditor.
2. "Benefit unit" means the fee each member pays, for each service that is planned to be connected to the water system, for the privilege of using the district's facilities.
3. "Board" means the board of directors of a district.
4. "Bond" means any revenue bond, refunding bond, or improvement bond, or other evidence of indebtedness of a district issued under this chapter.
5. "Director" means a member of the board of directors.
6. "District" means a water district organized under this chapter.
7. "Federal agency" includes the United States of America, the president of the United States, or any agency, instrumentality, or corporation of the United States of America which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of the United States of America or which may be owned or controlled, directly or indirectly, by the United States of America.
8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bonds.
9. "Law" means any statute of this state.
10. "Member" means an owner of real property that is located within a district, the tenant of the real property, or another person acting for the owner with the owner's written consent.

11. "Participating member" means a member who has subscribed to and paid the established fee for at least one benefit unit in a district, in the manner provided by this chapter.
12. "Project" means any work, undertaking, enterprise, or any combination of two or more projects which a district is authorized to construct and from which the district has derived or may derive revenues. "Project" includes all improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any work, undertaking, or enterprise a district is authorized to construct.
13. "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project and payable solely from all or any part of the revenue or interest on the revenue of the project in arrears or about to become due whether or not such interest is represented by interest certificates.
14. "Refunding bonds" means notes, bonds, certificates, or other obligations of a district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
15. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by a district in connection with, and all other income and receipts of whatever kind or character derived by a district from, the operation of any project.
16. "State engineer" has the same meaning as provided in chapter 61-03.
17. "Warrant" means an order drawn by the proper official of a district on its treasury, the warrant of order to be so drawn that when signed by the district treasurer in an appropriate place it becomes a check on the depository of such district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

**61-35-02. Petition.** A petition may at any time be filed with the state engineer requesting the state engineer to organize a district encompassing an area in one county or in two or more adjacent counties for the purpose of providing an adequate supply of water for the residents of the area. An area to be included in a district may not include property then included in any other district or included in the service area of a nonprofit corporation or cooperative association established under title 10 to operate a rural water system, except as otherwise permitted under section 61-35-25.



**61-35-03. Petition contents.** The petition must be signed by the owners of at least fifty percent of all real property lying within the outside perimeter of the area designated for inclusion in the proposed district, and must state:

1. The location of the area, describing the area to be served or specifying the area by an attached map.
2. The reasons a district is needed.

**61-35-04. Hearing after filing.** When a petition for the organization of a district is filed with the state engineer, the state engineer shall fix a time for a hearing on the petition not less than fifteen nor more than forty-five days after the filing of the petition. The state engineer shall prepare a notice as required by section 61-35-05. At least seven days before the date fixed for the hearing on the petition, the notice must be:

1. Published in the official county newspapers in the counties included within the district.
2. Transmitted with a copy of the original petition to the state engineer.

**61-35-05. Contents of notice.** The notice prepared by the state engineer must set forth:

1. The location of the area designated by the petitioners to be included in the proposed district, as described or shown by the original petition.
2. The time and place fixed by the state engineer for the hearing on the petition.
3. That all owners or tenants of real property or other interested persons within the boundaries described may appear and be heard.
4. That the proposed district, if organized, has no power or authority to levy any taxes.

**61-35-06. Appearances.** At the hearing on the petition, any owner or tenant of real property or other interested person within the boundaries of the area described in the petition may appear, in person or by a designated representative, and any representative of the state or a political subdivision or an interested person may appear, in favor of or in opposition to the organization of the proposed district. The appearances may also be filed in writing before the time set for the hearing.

**61-35-07. Findings - Order.** After the hearing, the state engineer may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the state engineer does not find that the district is reasonably necessary, the state engineer shall dismiss the petition. If the state engineer finds that required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health, convenience, and comfort of the residents, the state engineer shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order shall be published in the same newspaper or newspapers that published the notice of hearing. The state engineer shall prepare and preserve a complete record of the hearing on the petition and the state engineer's findings and action.

**61-35-08. Meeting of members - Election of board.** As a part of the order organizing the district, the state engineer shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board may not be later than thirty days after the hearing. The number of directors on the board, not to exceed nine, must be determined by a majority vote of those members present. Any member elected a director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, forfeits the office of director.

**61-35-09. Bylaws submitted at special meeting.** Within thirty days after election of the original board, proposed bylaws must be submitted for adoption at a special meeting of members of the district, written notice of which must be mailed to each member. Members present at the special meeting may adopt or amend any of the proposed bylaws, and may propose and adopt alternative or additional bylaws by a majority vote. The bylaws may subsequently be amended at any annual or special meeting of the participating members of the district. However, the bylaws of each district must provide:

1. For an annual meeting of participating members each year after the year of organization of the district and for mailing of written notice of the time and place of each annual meeting to each participating member and publication of the notice in the official newspaper of the county or counties served by the district not less than ten nor more than thirty days before each meeting.
2. That each participating member of the district is entitled to one vote at all annual and special meetings of the district for each benefit unit to which the member has subscribed.

**61-35-10. Directors divided into classes - Terms - Vacancies.** The initial board of each district shall divide its members by lot into three classes of as nearly equal size as possible. The terms of the directors in the first, second, and third classes expire on dates of the annual meetings in the first, second, and third years, respectively, following the year in which the district is organized, or as soon thereafter as their successors are elected and have qualified. At the annual meeting in each year after the year in which the district is organized, a director must be elected to succeed each director whose term of office expires on that date, and each director so elected holds office for a term of three years and until a successor is elected and has qualified. Vacancies must be filled for the unexpired term by appointment by the remaining directors.

**61-35-11. Board meetings.** The board shall meet annually on the same day as, and immediately following, the annual meeting of participating members, and may meet at other times it determines, or upon the call of the president or any two directors. At the first meeting of the initial board following its election, and at each succeeding annual board meeting, the board shall elect a president, vice president, secretary, and treasurer for the ensuing year. Board members are entitled to reasonable compensation to cover the expenses of serving on the board.

**61-35-12. Powers of district board.** Each district board has the power to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests,

estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities necessary to carry out the purposes of its organization.

3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of projects within the district.
4. Cooperate and contract with the state, its agencies, or its political subdivisions or any federal agency in research and investigation or other activities promoting the establishment, construction, development, or operation of projects within the district.
5. Furnish assurances of cooperation, and as principal and guarantor, or either, to enter into contracts with any federal agency, and with public corporations and political subdivisions of this state for the performance of obligations for the construction, operation, or maintenance of the district or for the delivery of water to any such department, agency, or political subdivision.
6. Construct, lease, or purchase separately or in cooperation with any federal agency or the state, its agencies, or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. Appoint and fix the compensation of such employees as the board deems necessary to conduct the business and affairs of the district and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for it in its proceedings.
8. Sell or exchange any and all real property purchased or acquired by the district. All money received from any such sale or exchange must be deposited to the credit of the district and may be used to pay expenses of the district.
9. Borrow money as provided in this chapter.
10. Issue and sell bonds in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project.
11. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the district.
12. Pledge any and all income, profits, and revenues received by the district in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project.

13. Pledge all or any part of any assessments levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.
14. Acquire by gift, purchase, or the exercise of the right of eminent domain, property required to construct, reconstruct, improve, better, or extend any project, whether completely or partially within or outside the district, and easements, rights in lands, and water rights in connection with the project.
15. Operate and maintain any project for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the district.
16. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the project, and in anticipation of the collection of the revenues of the project, issue revenue bonds to finance all or part of the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any project.
17. Pledge revenues of the project to the punctual payment of principal and interest on bonds. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the project which may be constructed or acquired after the issuance of bonds as well as the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the project improved, bettered, or extended.
18. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the district may not be created by any such contract or instrument.
19. Enter into and perform long-term or short-term contracts with any nongovernmental unit for the provision and operation by the district of sewerage facilities, when the board of the district determines such action to be in the public interest and necessary for the protection of the public health, in order to abate or reduce the pollution of waters caused by discharges of industrial wastes by the nongovernmental unit, and for the payment periodically by the nongovernmental unit to the district of amounts the board deems sufficient to compensate the district for all costs associated with providing, operating, and maintaining the sewerage facilities serving the nongovernmental unit.
20. Enter into and perform such contracts and agreements with other districts, political subdivisions, and state institutions as the board deems proper and feasible concerning the planning, construction, lease, or other acquisition and the financing, maintenance, and operation of sewerage facilities. Any districts contracting with each other may provide in any contract or agreement for a board, commission, or such other body as their boards deem proper to supervise, manage, and operate the sewerage facilities and may prescribe its powers and duties and compensation of its members.

21. Accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of any project, and to enter into agreements with such agency respecting such loan or grants.
22. Contract debts and borrow money, pledge property of the district for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the district.

Property of the district may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the district may not be incurred in any manner for payment of bonds under this chapter.

**61-35-13. Contracts for construction or maintenance of a project.** If the cost of construction or maintenance of a project does not exceed fifty thousand dollars, the work may be done on a day work basis or a contract may be let without being advertised. If the cost of the construction or maintenance exceeds fifty thousand dollars, the lowest and best bid must be accepted. The board must comply with the requirements of sections 61-35-88 through 61-35-103 when bidding a project.

The competitive bid requirement of this section may be waived if the board determines that an emergency exists requiring the prompt repair of a project and a contract may be made for the prompt repair of the project without seeking bids.

**61-35-14. Financing project through improvement bonds or special assessments - Apportionment of benefits.** A board may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. A board may issue improvement bonds in anticipation of the levy and collection of special assessments. If a board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and spread in proportion to benefits accruing to lands or premises benefited by the project. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.

**61-35-15. Revenue bonds.** A district may issue revenue bonds, not exceeding an aggregate total outstanding of twenty-five million dollars, to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the district board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.

**61-35-16. Plans and specifications.** As soon as reasonably possible after organizing a district, the board shall file with the state engineer copies of the plans and specifications for, and estimates of the cost of, any improvements authorized by this chapter which the board proposes to construct or acquire. The board shall determine a reasonable fee that each member shall pay for the privilege of utilizing the district's facilities, which shall be known as a benefit unit. By publication in the official county newspaper of each county in which all or part of the district is

located, the board shall generally describe the planned improvements, the area to be served, and the fee members will be required to pay for each service connected to the water system.

**61-35-17. Selling water.** If the capacity of the district's facilities permits, the district may sell water by contract to any political subdivision, other district, or other person, public or private, not within the boundaries of the district.

**61-35-18. Inclusion of property in district - Inclusion of municipality - Merger.**

1. Owners of real property outside any district which can economically be served by the facilities of the district may petition to be attached to the district. The petition must be filed with the state engineer and the state engineer shall proceed in substantially the same manner as is provided by this chapter for filing of and proceeding on a petition for organization of a district.
2. All or part of an incorporated city may be included in the boundaries of any existing district or a district being newly organized, provided the governing body of the city by resolution or ordinance gives its consent.
3. Boards of two or more districts by concurrent action and by approval of the state engineer may merge their districts into one. In case of merger the members of the boards of the merged districts may serve until the next annual meeting at which time the district shall comply with the requirements of section 61-35-08 regarding the number and eligibility of directors, adopt new bylaws, and set the terms of the new board according to section 61-35-10. The resulting district shall take over all the assets and legal liabilities of the districts joining in the merger. Obligations of any district secured by the revenue of the systems operated by the district must continue to be required, or a sinking fund must be established for that purpose created from revenue from the system operated over the same area by the resulting district in accordance with the laws under which the obligations were issued, until all obligations of the old district have been retired.
4. If there is a conflict between two or more districts concerning which district will serve an area, the state engineer, after a public hearing, shall determine which district can more adequately and economically provide service within the area.

**61-35-19. Taxing prohibited.** A district has no power to levy any taxes. The facilities constructed or otherwise acquired by any district, including ponds, reservoirs, pipelines, wells, deck dams, and pumping installations, the revenues obtained by the district from the sale of water, and the revenue bonds or interest on the revenue bonds issued by any district are not taxable in any manner by the state or a political subdivision.

**61-35-20. Exclusion of real property from district.** If it becomes apparent that any real property included within a district but contiguous to a border cannot economically or adequately be served by the facilities of the district, the owners of the real property or the board may file with the state engineer a petition to the state engineer requesting that the real property be excluded from the district. The petition must:

1. Describe by full and partial section and by township and range, or by lot number and subdivision, as the case may be, the real property that it is proposed to exclude from the district.
2. State that the real property cannot economically or adequately be served by the facilities of the district and that it is not feasible for the district to enlarge or extend its facilities to economically and adequately serve the real property.
3. Be signed by the owners of all the real property that it is desired to exclude from the district or by all of the board.

**61-35-21. Inactive district dissolved.** A petition may be filed with the state engineer requesting the state engineer to dissolve an inactive district. The petition must:

1. List all real and personal property of any kind exclusive of records, maps, plans, and files and state that all of its debts and obligations have been fully paid.
2. State that the district is not functioning and will probably continue to be inoperative.
3. Be signed by three-fourths of the members of the district.

**61-35-22. Hearing.** Upon the filing with the state engineer of a petition under section 61-35-20 or 61-35-21, the state engineer shall fix a time for consideration of the petition. The state engineer may hold a hearing on the petition. After consideration of the petition, and after the hearing if one is held, the state engineer shall ascertain whether:

1. The petition meets all of the requirements prescribed by section 61-35-20 or 61-35-21.
2. It appears from all information available to the state engineer that each allegation included in the petition is factual.

If the state engineer's finding on each of the foregoing points is positive, the state engineer shall declare the real property described in the petition detached from the district or declare the district dissolved, as the case may be. The state engineer shall notify the secretary of the district of the state engineer's action and the secretary shall amend the records of the district to show that the real property described in the petition has been detached from the district. Within thirty days, the secretary shall deliver to the state engineer all records, maps, plans, and files of the dissolved district.

**61-35-23. Disposition of assets.** If a district is dissolved the state engineer shall provide for the disposition of any property owned by the district and for the apportionment of the proceeds and any other moneys belonging to the district to an adjoining district. If there is no adjoining district the state engineer shall apportion and dispose of the property and proceeds to the general fund of each county in the district in proportion to their area in the district. Any pledge or lien given with respect to any outstanding bonds of the district remains and any property so encumbered must be handled in conformity with the bond resolution or trust indenture. Money, property, or the proceeds from property may not be distributed to any private interests.

**61-35-24. Not exempt from other requirements.** This chapter does not exempt any district from the requirements of any other statute, whether enacted before or after August 1, 1995, under which the district is required to obtain the permission or approval of, or to notify, the water commission, or the state department of health and consolidated laboratories, or any other agency of this state or of any of its political subdivisions before proceeding with construction, acquisition, operation, enlargement, extension, or alteration of any works or facilities that the district is authorized to undertake under this chapter.

**61-35-25. Alternate operation by nonprofit corporation or cooperative.** A nonprofit corporation or cooperative association established under title 10 for the specific purpose of operating a rural water system may petition the state engineer to organize a district, in the manner provided by section 61-35-02. The signatures of the corporation's or cooperative's officers on the petition and a resolution adopted by the members in the manner provided in section 10-15-37 for amendments to articles or in the manner provided in subsections 1 and 2 of section 10-26-01, as the case may be, approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a nonprofit corporation or cooperative association, the following procedures apply:

1. After final approval of the petition by the state engineer, the secretary of the corporation or cooperative shall file a notice with the corporation or cooperative in accordance with title 10.
2. Upon filing of the notice, the nonprofit corporation or cooperative ceases to exist as a title 10 entity and all assets and liabilities of the nonprofit corporation or cooperative become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the corporation or cooperative are the officers and board of the district.
4. The applicable laws of the state and the articles of incorporation and bylaws of the corporation or cooperative control the initial size and initial term of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original corporation or cooperative and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a nonprofit corporation or cooperative association is binding for its term on a successor district organized by the nonprofit corporation or cooperative association, unless otherwise agreed in writing by all parties



to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

**61-35-26. Annexation of land by a municipality.** A district organized under this title or title 10 must be fairly compensated for losses resulting from annexation by a city under chapter 40-51.2. If a district has outstanding bonds the annexation proceedings must be in accordance with the bond resolution or trust indenture. The governing body of a city and the board of directors of the district may agree to terms that provide that the facilities owned by the district and located within the city must be retained by the district for the purpose of transporting water to customers outside the municipality.

**61-35-27. Personal liability.** Except as otherwise provided in this chapter, a director, officer, employee, or other personnel of the board are not liable for the district's debts or obligations and a director, officer, employee, or volunteer of the board is not personally liable in that capacity for a claim based upon an act or omission of the person in the discharge of the person's duties, except for any of the following:

1. A breach of the duty of loyalty to the district.
2. Acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law.
3. A transaction from which the person derives an improper personal benefit.

**61-35-28. Proceedings to confirm contracts, special assessments, and other acts.** Any district board, before making any contract, levying special assessments, or issuing special assessment improvement bonds or revenue bonds, or before taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract, levying special assessments, issuing improvement bonds or revenue bonds, or leading up to any other special action, may be judicially examined, approved, and confirmed. Such judicial proceedings must substantially comply with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

**61-35-29. Authorization to organize association of rural water systems.** A district, upon resolution of the district board, may organize and participate in an association of rural water systems organized under chapters 10-24 through 10-28.

**61-35-30. Resolution authorizing project and the issuance of revenue bonds.** The acquisition, construction, reconstruction, improvement, betterment, or extension of any project and the issuance of bonds in anticipation of the collection of the revenues of such project to provide funds to pay the associated costs may be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. The amount of such bonds may not exceed the amount authorized by the participating members of the district as provided in this chapter. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

**61-35-31. Refunding bonds authorized by resolution - Adoption - Taking effect.** Refunding bonds must be authorized by resolution of the board. The resolution may be adopted at a regular or special meeting, including the meeting at which it is

introduced, by the affirmative vote of a majority of the members of the board, and takes effect immediately upon adoption. Other proceedings or procedure are not required for the issuance of refunding bonds by the district.

**61-35-32. Cost of project - How determined.** In determining the cost of a project, the board may include the estimated cost of bond issuance, all engineering, inspection, fiscal, and legal expenses, any bond reserves, and the estimated interest that will accrue during construction, and within six months after completion of construction.

**61-35-33. Provisions governing bonds.** The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after the adoption of the original resolution must prescribe:

1. The rate or rates of interest, payable semiannually.
2. Whether the bonds will be in one or more series.
3. The date or dates the bonds will bear.
4. The time or times, not exceeding forty years from their respective dates, when the bonds will mature.
5. The medium in which the bonds will be payable.
6. The place or places where the bonds will be payable.
7. Whether or not the bonds will carry registration privileges and what those privileges, if any, will be.
8. The terms of redemption, if any, to which the bonds will be subject.
9. The manner in which the bonds will be executed.
10. The terms, covenants, and conditions that the bonds will contain.
11. The form in which the bonds will be issued.

**61-35-34. Sale of bonds - When private sale authorized - Public sale and notice.** Revenue bonds or refunding bonds must be sold at not less than ninety-eight percent of par. The bonds may be sold at private sale without notice or at public sale after notice of the sale has been published once at least five days before the sale in a newspaper circulating in the district. Bonds sold at private sale must bear interest at a rate and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There is no interest rate ceiling on issues sold at public sale or to the state or any of its agencies or instrumentalities. As to any series or issue of bonds for which a notice of sale was published but for which no bids were received or all bids received were rejected, the board, without readvertising the bonds for sale, may negotiate the sale of all of the bonds to any person upon terms complying with those specified in the published notice of sale and, if bids were rejected, more favorable to the district than those specified in the rejected bid.

**61-35-35. Bonds and receipts or certificates issued pending preparation of bonds - Negotiability.** Pending the preparation of the definitive bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the board.

**61-35-36. Validity of bonds.** Revenue bonds or refunding bonds bearing the signatures of the appropriate officers who are in office on the date of signing are valid and binding obligations notwithstanding that before the delivery and payment any or all of the persons whose signatures appear on the bonds have ceased to be officers of the issuing district. The validity of the bonds is not dependent upon or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which the bonds are issued. The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

**61-35-37. Bonds exempt from taxation.** Bonds issued under this chapter and their income are exempt from taxation by the state or by any political subdivision.

**61-35-38. Covenants that may be inserted in resolution authorizing bonds.** Any resolution authorizing the issuance of bonds under this chapter to completely or partially finance or refinance the acquisition, construction, reconstruction, improvement, betterment, or extension of a project may contain covenants that limit the exercise of powers conferred by this chapter as to:

1. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of the project.
2. The use and disposition of the revenues of the project.
3. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.
4. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.
5. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on said bonds.
6. The payment by the district to the account of the project of a fair and reasonable amount for the services, facilities, or commodities furnished the district or any of its departments by the project.
7. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of the project.
8. The insurance to be carried upon the project and the use and disposition of insurance moneys.
9. The keeping, inspection, and audit of books of account.
10. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
11. The rights, liabilities, powers, and duties arising upon the breach by the district of any covenants, conditions, or obligations.

12. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to, the bonds, the powers and duties of such trustee, and the limitations of liabilities thereof.
13. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.
14. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds that holders of which must consent to the resolution or contract, and the manner in which such consent may be given.
15. The subordination of the security of any bonds issued under this chapter and the payment of principal and interest on those bonds, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the district issued to finance or refinance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.

Nothing in this section authorizes any district to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a debt or indebtedness within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt or indebtedness.

**61-35-39. Liability of district for bonds - Taxing power prohibited - Bond not a lien.** Revenue and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to their payment and the district issuing the bonds may not be subject to any pecuniary liability. The holder of any such bonds may not enforce payment of the bonds against any property of the district. Bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of the district. Each bond issued under this chapter must recite in substance that the bond, and interest on the bond, is payable solely from the revenue pledged to the payment and that the bond does not constitute a debt of the district within the meaning of any constitutional or statutory limitation.

**61-35-40. Duties of district and officers.** To adequately secure the payment of bonds and interest on the bonds, any district issuing bonds under this chapter, and the district's officers, agents, and employees shall:

1. Pay or cause to be paid punctually the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the refunding bond and in accordance with the resolution authorizing its issuance.
2. Operate the project in an efficient and economical manner and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. Such fees, tolls, rentals, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:

- a. To pay all current expenses of operation and maintenance of the project;
  - b. To pay the interest and principal on the bonds as they become due;
  - c. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the refunding bonds; and
  - d. To meet any other obligations of the district which are charges, liens, or encumbrances upon the revenues of the project.
3. Operate, maintain, preserve, and keep every part of the project in good repair, working order, and condition.
  4. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.
  5. Pay and discharge all lawful claims for labor, materials, and supplies, which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.
  6. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds, or, if the resolution is modified, as provided in the modified resolution.
  7. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the district are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.

None of the duties contained in this section require any expenditure by the district of any funds other than revenue received from the project. The performance of the duties enumerated in this section is of the essence of the contract of the district with the bondholders.

**61-35-41. Remedies of bondholders in general.** Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:

1. By mandamus or other suit, action, or proceeding at law or in equity, enforce the holder's rights against the district and its board and any of its officers, agents, and employees and may require the district or the board or any officers, agents, or employees of the district or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.
2. By action or suit in equity, require the district and the board to account as if they were the trustees of an express trust.

3. By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bond.

A right or remedy conferred by this chapter upon any bondholder, or upon any trustee for a bondholder, is not intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

**61-35-42. Receiver of project - When appointed.** If the district defaults in the payment of the principal or interest on any of the bonds when due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the district or the board, or officers, agents, or employees of the district fail or refuse to comply with the provisions of this chapter, or default in any agreement made under this chapter, or default in any agreement made with the holders of the bonds, any bondholder, or the trustee for any bondholder, may apply to the district court of the county in which all or any part of the project is located for the appointment of a receiver of the project whether or not all of the bonds have been declared due and payable and whether or not the holder or trustee is seeking or has sought to enforce any other right or to exercise any other remedy in connection with the bonds. Upon such application, the court may appoint a receiver of the project. If the application is made by the holders of twenty-five percent in principal amount of the outstanding bonds, or by any trustee for holders of the bonds in that principal amount, the court shall appoint a receiver of the project.

**61-35-43. Powers and duties of receiver of project.** A receiver appointed under section 61-35-42, directly or by agents and attorneys, shall immediately enter into and upon and take possession of the entire project and may exclude from the project the district, its board, officers, agents, and employees, and all persons claiming under them. The receiver shall have, hold, use, operate, manage, and control the entire project in the name of the district or otherwise as determined by the receiver. The receiver shall exercise all the rights and powers of the district with respect to the project. The receiver shall maintain the project and restore and keep it insured and make all repairs the receiver deems necessary, proper, or expedient. The receiver shall establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the project as the receiver deems necessary, proper, and reasonable. The receiver shall collect all revenues, deposit them in a separate account, and apply them as the court directs.

**61-35-44. Court may direct receiver to surrender possession of project.** After payment of all that is due upon the bonds and any other obligations that are a charge, lien, or encumbrance on the revenues of the project under any of the terms of any covenants or agreements with bondholders, and after all defaults have been made good, the court, after notice and hearing as it deems proper, may direct the receiver to surrender the possession of the project to the district. The holders of the bonds have the same right to secure the appointment of a receiver upon any subsequent default as is provided in this chapter in the case of an original default.

**61-35-45. Receiver subject to jurisdiction of court - Jurisdiction of court.** A receiver under this chapter acts under the direction and supervision of the appointing court and is subject to the orders of that court and may be removed by it. This chapter does not limit the jurisdiction of the court to enter orders it deems necessary for the receiver to exercise any functions set forth in this chapter.

**61-35-46. Construction.** Powers under this chapter are in addition and supplemental to and not in substitution for, and the limitations imposed by this chapter do not affect the powers conferred by, any other law. Bonds may be issued under this chapter without regard to any other laws of this state, except as provided in section 61-35-39. The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter for those purposes, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. If this chapter is inconsistent with any other law of this state, the provisions of this chapter are controlling with reference to the issuance of bonds.

**61-35-47. Limitations on authorizations contained in chapter - Effect of chapter on bonds issued before August 1, 1995.** Nothing in this chapter may be deemed in any way to:

1. Alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the district, before August 1, 1995;
2. Authorize the district to alter the terms of any such agreements, or to impair, or to authorize the district to impair, the rights and remedies of any creditors of the district; or
3. To authorize any district to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument that would constitute a debt or indebtedness within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt or indebtedness.

**61-35-48. Power of district to defray expense of improvements by special assessments.** Upon complying with this chapter, a district may defray the expense of any or all of the improvements by special assessments, including the construction of all or part of a water supply system or a sewerage system, or both, or any improvement, extension, or replacement of such systems, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary and storm sewer mains and outlets, facilities for the treatment and disposal of sewage and other district, industrial, and domestic wastes, and all other appurtenances, contrivances, and structures used or useful for a complete water supply and sewerage system. In planning an improvement project the board may include in the plans any and all items of work and materials which in its judgment are necessary or reasonably incidental to the completion of an improvement project of that type.

**61-35-49. Waterworks and water mains - Acquisition of waterworks, sewage treatment and disposal plants and sewer systems.** The provisions of this chapter relating to water mains and waterworks apply only to districts that own or contemplate owning a system of waterworks and water mains. In the purchase of a waterworks system or of a sewage treatment or disposal plant or of a system of sewers, either by eminent domain or otherwise, a district may create improvement districts, direct the preparation of plans and specifications, adopt a resolution

declaring the purchase of the facilities necessary, and take all other proceedings prescribed by this chapter which would be taken in case of the construction of such facilities by the district itself for the purpose of defraying the cost by special assessment of the benefited property. The benefited property may be specially assessed for the purchase of such facilities, either separately or as a part of a new system, the same as if the facilities were constructed entirely anew.

**61-35-50. Acquiring property for sewers, water mains, and water supply beyond district limits.** When it is necessary to conduct the sewage of a district or to acquire a supply of water beyond the district limits and to construct mains or aqueducts to conduct water or sewage to the district limits, the board by grant, purchase, or condemnation proceedings may acquire private property over which to construct the sewer, or upon and over which to establish facilities for obtaining and storing such water supply and aqueducts or mains for conducting water to the corporate limits. Public property may be acquired for those purposes by grant or purchase from the government or public corporation owning the property. The cost of acquiring such property and building such sewer or other facilities upon or over the property may be included in the cost of construction or acquisition of a district waterworks or sewerage system and in the district's special assessments levied, or the entirety of such a project may be completed as an improvement to an existing waterworks or sewage system and special assessments may be levied for that purpose in accordance with the provisions of this title.

**61-35-51. Condemnation of land and rights of way for special improvements - Taking of possession - Trial - Appeal - Vacation of judgment.** When property required to make any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the board of the district making the improvement, shall call a special term of court for the trial of the proceedings and may summon a jury for the trial. The proceedings must be instituted and prosecuted in accordance with chapter 32-15, except that when the interest sought to be acquired is a right of way for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or sewage, whether within or without the district, the district may make an offer to purchase the right of way and may deposit the amount of the offer with the clerk of the district court of the county in which the right of way is located, and may then take possession of the right of way. The offer must be made by resolution of the board of the district, and a copy of the resolution must be attached to the complaint filed with the clerk of court in accordance with section 32-15-18. The clerk shall immediately notify the owners of the land on which the right of way is located of the deposit by causing a notice to be appended to the summons when served and published in the proceedings as provided in the North Dakota Rules of Civil Procedure, stating the amount deposited or agreed in the resolution to be deposited. The owner may then appeal to the court by filing an answer to the complaint in the manner provided in the North Dakota Rules of Civil Procedure, and may have a jury trial, unless a jury is waived, to determine the damages. However, upon due proof of the service of the notice and summons and upon deposit of the aggregate sum agreed in the resolution, the court may without further notice make and enter an order determining the district to be entitled to take immediate possession of the right of way. If under laws of the United States proceedings for the acquisition of any right of way are required to be instituted in or removed to a federal court, the proceedings may be taken in that court in the same manner and with the same effect as provided in this section and the clerk of the district court of the county in which the right of way is located shall perform any and all of the duties set forth in this section, if the clerk is directed to do so by the federal court. The proceedings must be determined as speedily as practicable. An appeal from a judgment in the condemnation proceedings must be taken within sixty days after the entry of the judgment and appeal must be given



preference by the supreme court over all other civil cases except election contests. No final judgment in the condemnation proceedings awarding damages to property used by a district for sewer or other purposes may be vacated or set aside if the district pays to the defendant, or into court for the defendant, the amount awarded in cash. The district may levy special assessments within the district to pay all or part of the judgment. To provide funds for the payment of the judgment or for the deposit of the amount offered for purchase of a right of way, the district may issue bonds on the fund of the improvement district as provided in section 61-35-84, in anticipation of the levy and collection of special assessments or revenues to be appropriated to the fund in accordance with this chapter. The bonds may be issued upon or after the commencement of the condemnation proceedings. Upon the failure of the district to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

**61-35-52. Improvement districts to be created.** For an improvement project under section 61-35-48 and defraying the cost of the project by special assessments, a district may create water districts, sewer districts, and water and sewer districts, and may extend any such district when necessary. The appropriate special improvement district must be created by resolution. The district must be designated by a name appropriate to the type of improvement for which it is created and by a number distinguishing it from other improvement districts. Nothing in this chapter prevents a district from making and financing any improvement and levying special assessments for the improvement under any alternate procedure in this title. For examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access.

**61-35-53. Size and form of improvement districts - Regulations governing.** Any improvement district created by a district may embrace two or more separate property areas. Each improvement district must be of such size and form as to include all properties which in the judgment of the board, after consultation with the engineer planning the improvement, will be benefited by the construction of the improvement project which is proposed to be made in or for the district, or by any portion of the project. A single district may be created for an improvement of the type specified in section 61-35-48, notwithstanding any lack of uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the improvement district. The jurisdiction of a district to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the improvement district is subsequently determined not to be benefited by the improvement, or by a particular portion of the improvement project, and is not assessed for that purpose. The board may omit from a water or sewer district properties within the district limits which are benefited by the improvement but do not abut upon a water or sewer main, without prejudice to the right and power of the district subsequently to assess such properties to the extent and the manner permitted by law. The board may by resolution enlarge an improvement district in which an improvement is proposed or under construction upon receipt of a petition signed by the owners of three-fourths of the area to be added to the district.

**61-35-54. Engineer's report required - Contents.** After a special improvement district has been created, the board, if it deems it necessary to make any of the improvements set out in section 61-35-48 in the manner provided in this chapter, shall direct the engineer for the district, or some other competent engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement. The engineer shall prepare profiles, plans, and specifications of the

proposed project and estimates of the total cost. The estimate of costs prepared by the engineer must include acquisition of right of way, and must be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed assessment district.

**61-35-55. Approval of plans, specifications, and estimates.** After receiving the engineer's report required by section 61-35-54, the board may direct the engineer to prepare detailed plans and specifications for construction of the improvement. The plans and specifications must be approved by a resolution of the board.

**61-35-56. District engineer to retain copy of plans, specifications, and estimates - Sale of copies.** The engineer acting for the district shall retain a copy of the plans, specifications, and estimates that have been prepared for any improvement. The engineer shall furnish copies at the request of any person at a reasonable cost.

**61-35-57. Plans, specifications, and estimates filed in office of district.** The plans, specifications, and estimates prepared as directed under section 61-35-55 are the property of the district, must be filed in the district office, and must remain on file subject to inspection by any interested person.

**61-35-58. Hearing - Notice - Contents.** Upon the filing of the engineer's report provided for in section 61-35-54, and after satisfying the requirements of section 61-35-55, the district board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement, and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county in which the project is or will be located the list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. Notice of the filing must be included in the notice of hearing. Notices of the hearing must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing must specify when and where votes concerning the proposed project may be filed and contain an assessment list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing may not be fewer than twenty days after the mailing of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners and the governing body of any county, township, or city to be assessed must be informed at the hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

**61-35-59. Voting on proposed projects.** At the hearing, the affected landowners and any county, township, or city to be assessed must be informed when and where votes concerning the proposed project may be filed. Affected landowners and the governing body of any county, township, or city to be assessed, have thirty

days after the date of the hearing to file their votes with the secretary of the district. Once the deadline for filing votes has been reached, no more votes may be filed and no person may withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the votes have been filed and the deadline for filing votes has passed, the board shall immediately determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against the proposed project, then the vote constitutes a bar against proceeding further with the project. If the board finds that the number of votes filed against the proposed project is less than fifty percent of the votes filed, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-35-62 and 61-35-63, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in sections 61-35-88 through 61-35-103. The board may enter into any agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of sections 61-35-88 through 61-35-103. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal begins to run on the date of publication of the notice.

**61-35-60. Voting right or powers of landowners.** In order that there may be a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project are as provided in this section. The landowner of land affected by the project has one vote for each dollar of assessment to which the land is subject or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed has one vote for each dollar of assessment against such county, township, or city. There may be only one vote for each dollar of assessment, regardless of the number of owners of a tract of land. If more than one owner of a tract of land exists, the votes must be prorated among them in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any affected landowner or landowners.

**61-35-61. Assessment of cost of project.** When the district board proposes to make any special assessment under this chapter, the board, prior to the hearing required under section 61-35-58 shall inspect any and all lots and parcels of land that may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with benefits received but not exceeding such benefits, against:

1. Any county, township, or city, in its corporate capacity, which may be directly or indirectly benefited by the improvement.
2. Any lot, piece, or parcel of land that is directly benefited by the improvement.

In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, and productivity. Property belonging to the United States is exempt from assessment unless the United States has provided for the payment of any assessment that may be levied against its property for benefits received. Benefited property belonging to the state, a county, a city, a school district, a park district, or a township is not exempt from assessment and political subdivisions that own assessed property shall provide for the payment of such assessments, including installments and interest, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of those assessments, installments, and interest from its general fund or by levy of a general property tax against all the taxable property in the political subdivision in accordance with law. No tax limitation provided by any statute of this state applies to tax levies made by any political subdivision for paying any special assessments made under this chapter. There must be attached to the list of assessments a certificate signed by a majority of the members of the board certifying that it is a true and correct assessment of the benefit described to the best of their judgment and stating the several items of expense included in the assessment.

**61-35-62. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.** After entering an order establishing the project, the district board shall cause the assessment list to be published once each week for two successive weeks in the newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located. The publication must include a notice of the time and place the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The date set for the hearing must be not less than twenty days after the first publication of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that it is correct as confirmed by the board. The secretary shall file the list in the office of the district secretary.

**61-35-63. Appeal to state engineer.** Within ten days after the hearing under section 61-35-62, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes as determined under section 61-35-60, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, to review the assessments and examine the location and design of the proposed project. Upon receipt of a petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, the state engineer may proceed to correct the assessments, and the state engineer's correction and adjustment of assessments is final. If it appears to the state engineer that the project has been improperly located or designed, the state engineer may order a relocation and redesign, which must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision claiming to receive no benefit from the project may appeal to the state engineer the question of whether there is any benefit. The appeal must be filed with the state engineer within ten days after the hearing on assessments in

section 61-35-62. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision and may determine only if there is any benefit to the landowner or political subdivision. The determination of the state engineer upon the appeal is final.

**61-35-64. When assessments may be made.** After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the district board, the board may direct special assessments to be levied for the payment of appropriate costs and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate must include the estimated construction cost under the terms of any contract, a reasonable allowance for cost of extra work that may be authorized under the plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorneys' fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices, printing of improvement bonds, cost necessarily paid for damages caused by such improvement, interest during the construction period, and all expenses incurred in making the improvement and levy of assessments.

A contract or contracts may not be awarded which exceed, by forty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

**61-35-65. Reassessment of benefits.** The district board may hold at any time or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of the project to each tract of land affected. At least ten days' notice of the hearing must be given by publication in the newspaper or newspapers having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice by ordinary mail to each owner of land whose assessment is proposed to be raised as determined by the records of the register of deeds or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make a reassessment more than once every ten years. Any assessment or balance of an assessment supporting a project fund may not be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

**61-35-66. Correction of errors and mistakes in special assessments - Requirements governing.** If mathematical errors or other mistakes occur in making any assessment resulting in a deficiency in that assessment, the district board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

**61-35-67. Lien of special assessment.** A special assessment imposed by a district, with accrued interest and penalties, is a lien upon the property on which the assessment is levied from the time the assessment list is approved by the district board until the assessment is fully paid. The liens have precedence over all other liens except general tax liens and may not be divested by any judicial sale. Mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property does not defeat the lien if the assessed property

can be identified by the description in the assessment list. This chapter must be considered notice to all subsequent encumbrances of the priority of special assessments imposed under this chapter.

**61-35-68. Sewer or water improvements in districts may be paid for by service charges.** A district constructing a sewer or water improvement under the special assessment method may resolve in the resolution or ordinance required by section 61-35-52, that a portion of the cost of the improvement must be raised by service charges for the use of the improvement and of the utility of which it forms a part. If the district so resolves, it may determine in its resolutions, ordinances, and other proceedings relating to the levying of special assessments and the issuing of bonds to pay the cost of such improvement, that a specified portion or all of such cost must be assessed specially against any property specially benefited and may cause to be assessed only the portion so determined. In that event the entire remainder of the cost, including interest as well as principal of any bonds issued, over and above the amount of special assessments actually collected and received from time to time in the fund of the improvement district, must be paid from the net revenues derived from the service charges. All of the applicable provisions of this chapter relating to special assessments are applicable to such improvements except as to the portion of the cost of improvements resolved or ordained to be paid by service charges. The board of the district shall provide for the establishment, imposition, and collection of service charges for the services furnished by the improvement and the utility of which it forms a part, and in that connection it has all the rights and powers respecting such service charges as it would have with respect to like matters if the improvement were made in accordance with chapter 40-35. The net revenues derived from the imposition and collection of the service charges or any portion of the service charges as are determined by the board in the resolutions and ordinances, must be paid into the appropriate improvement district funds created under section 61-35-83. The revenues when collected must be used and applied in the same manner as moneys paid into such funds from the collection of special assessments. The board of any district issuing bonds to finance any such improvement, in its resolutions and ordinances, may establish an assessment reserve in the fund of the improvement district, to which it may appropriate net revenues of the utility or system from time to time received in excess of amounts required, with special assessments then on hand, to meet the principal and interest next due on the bonds. Before November first of any year the district may by resolution determine the proportion which the amount then on hand in the assessment reserve, and irrevocably appropriated to the payment of the bond, bears to the aggregate amount of the installment of the special assessments levied for the improvement which is payable in the following year, including interest. The district may direct the auditor to reduce, by not more than a proportionate amount, the total of that installment and interest which would otherwise be placed upon the tax list of the district for the current year, against each lot and tract of land assessed or taxed for improvement. If the installment of the special assessment on any property has been prepaid, the board may direct the district to refund, out of the assessment reserve, to the owner of the property at the time of the refund as indicated in the records of the register of deeds of the county, a sum not exceeding a similar proportion of the principal amount of such installment, excluding interest.

**61-35-69. Abbreviations, letters, or figures may be used in proceedings for levy and collection of special assessments.** In all proceedings for the levy and collection of special assessments, abbreviations, letters, and figures may be used to denote all or parts of additions, lots, lands, blocks, sections, townships, ranges, years, days of the month, and amounts of money.

**61-35-70. District office to keep complete record of improvements - Record as evidence.** The district office shall keep a complete record of all the proceedings taken in the matter of making any improvements under this chapter. The record must include all reports and confirmations, all petitions, orders, notices and proofs of publication, and resolutions of the board. The record, a certified transcript of the record, or the original papers, proofs of publications, orders, or resolutions on file in the office must be admitted in evidence in any court or place in this state without further proof as evidence of the facts in those documents.

**61-35-71. Defects and irregularities in improvement proceedings are not fatal.** Defects and irregularities in any proceedings had or to be had under this chapter relating to district improvements by the special assessment method, if the proceedings are for a lawful purpose and are unaffected by fraud and do not violate any constitutional limitation or restriction, do not invalidate the proceedings, and no action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any such defects or irregularities in the proceedings, unless commenced within thirty days of the adoption of the resolution of the board awarding the sale of bonds to finance the improvement.

**61-35-72. Payment of special assessments - Interest.** All special assessments levied under this title may be paid without interest within ten days after they have been approved by the board and thereafter bear interest at an annual rate not exceeding one and one-half percentage points above the average net annual interest rate on any bonds for the payment of which they are pledged on the total amount remaining unpaid.

**61-35-73. Lien between vendor and vendee of special assessments.** As between a vendor and vendee of real property, unless the purchase contract otherwise provides, the installments of all special assessments for local improvements which are required to be certified and returned to the county auditor in each year become a lien upon the real property upon which they are assessed from and after the first day of December in that year.

**61-35-74. Sewer special assessments extended over a period of not more than thirty years.** Special assessments for the payment of the cost of constructing any sewer are payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not exceeding thirty years as the board may fix by ordinance or resolution.

**61-35-75. Water main and waterworks special assessments extended over a period of not more than thirty years.** Special assessments for the payment of the cost of constructing or laying any water mains or constructing any waterworks are payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not more than thirty years as the board may fix by ordinance or resolution.

**61-35-76. Payments in full of assessments - Payments to county treasurer or district treasurer - Receipts.** The owner of any property against which an assessment has been made under this title for the cost of any improvement may pay in full or in part the amount remaining unpaid and the unpaid accumulated interest. The payment in full discharges the lien of the assessment upon that property. The payment may be made to the county treasurer upon all installments of the assessments which have been certified to the county auditor, and may be made to

the district treasurer upon all portions of the assessment which have not been certified. Any person desiring to pay any portion of the assessment to the district treasurer shall obtain from the district treasurer a certificate of the amount due upon the assessment which has not been certified to the county auditor and shall present the certificate to the district treasurer. The district treasurer shall receive and collect that amount and issue a receipt to the person paying the assessment. The district treasurer shall note upon the treasurer's records the payment of the assessment.

**61-35-77. Certification of assessments to county auditor.** When a district board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments are to bear, which rate may not exceed one and one-half percent above the bond rate. Interest on unpaid special assessments commences on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which must be due and payable not more than thirty years after date of the bonds to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project and the part of the project to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the district board shall prorate the cost of construction or, if a reassessment of benefits has been adopted, the costs must be prorated in accordance with the reassessment of benefits as authorized by section 61-35-65. The district treasurer shall annually certify to the county auditor all uncertified installments of assessments which are to be extended upon the tax lists of the district for the current year, in the manner provided in this section. The annual certification must continue until the amount of moneys on deposit in the fund established under section 61-35-83 is sufficient to cover outstanding principal of and interest on any obligations issued to fund the projects, and in addition, to repay the district for any payments made by the district to fund deficiencies in the fund established under section 61-35-83.

**61-35-78. District treasurer to insert amount of improvements in county real estate book or other forms - Regulations governing.** The district treasurer shall notify the county auditor not later than August twentieth in each year of any special assessments that were made in the district in addition to those reported in the previous year. The county auditor shall make and deliver to the district treasurer on or before September twentieth each year a copy of the real estate assessment book or other forms for the current year covering all additions in which any special assessments have existed and where any will appear for the current year as advised by the district treasurer. The district treasurer shall insert in the proper columns under the appropriate headings the amount of each of the installments of the assessments on the lots or subdivisions of lots or tracts of land which are to be extended upon the tax lists of the district for the current year. The district treasurer shall show the total amount of special assessments certified to the county auditor for the current year. If a division of property has been made since the original assessment, the district treasurer shall make or cause to be made the proper division of the special assessments on the lots or tracts of land in the same manner as general taxes are divided and assessed as furnished by the county auditor. The district treasurer shall certify the special assessments to the county auditor by November first of each year.



**61-35-79. Extension of special assessments on tax lists - Collection - Payment over to district.** The county auditor shall extend the special assessments upon the tax lists of the district for the current year and the assessments with interest and penalties must be collected as general taxes are collected and paid over to the district treasurer and shall be placed by the district treasurer in the respective funds for which they were collected.

**61-35-80. Special assessment record book kept by county auditor - Assessments certified for more than one year.** The county auditor shall keep a special assessment record. When any district causes the installments of special assessments for a period of more than one year to be certified, the county auditor shall cause the certified special assessments to be recorded for the respective years and in the amounts shown in the certificate of the district treasurer. The certificate of the district treasurer must include a list of all lots and tracts of land upon which such assessments are levied, designating the purpose of the assessment, the fund to which it belongs, and the installment of such assessment for each year against each lot or tract, including interest.

**61-35-81. County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement.** Special assessments of any kind certified to the county auditor by the district treasurer must be paid to the county treasurer and included in the receipt required by section 57-20-08. If the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, the county treasurer shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due. When prorating any tax payment received before October fifteenth, the term "due", as it pertains to real estate taxes, includes only the first installment of real estate taxes. Special assessments are not subject to abatement or refund by proceedings under chapter 57-32, but may be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the district treasurer of all the taxes and special assessments collected during the preceding month, shall certify the amounts of special assessments collected. The certificate must state specifically the lot or known subdivision as it appears on the tax books of the county treasurer, and the block, addition, amount collected, and amount credited to each lot or known subdivision, and the year for which the sum was collected. The certificate must be furnished to the district treasurer.

**61-35-82. Interest and penalties added to special assessments - County treasurer to collect and pay over.** The county treasurer shall add to all special assessments the same interest and penalties that are added in the case of general taxes and at the same time. The county treasurer shall collect the interest and penalties with the special assessments and shall pay all such interest and penalties collected over to the district treasurer.

**61-35-83. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.** All special assessments and taxes levied and other revenues pledged under the provisions of this chapter to pay the cost of an improvement constitute a fund for the payment of that cost, including all principal of and interest on bonds and other obligations issued by the district to finance the improvement, and may be diverted to no other purpose. The district treasurer shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each fund must be designated by the name and number of the improvement district in or for which the special assessments, taxes, and revenues are collected. When all principal and interest on

bonds and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the district.

**61-35-84. Bonds - When payable - Amounts - Interest.** At any time after entering into a contract for a project to be financed in whole or in part by special assessments, a district may issue temporary and definitive bonds on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section 40-24-19. If the bonds are issued to finance a sewer or water project, the net revenues derived from the imposition of service charges to be imposed and collected with respect to the project as provided in section 61-35-68 may be pledged to payment of those bonds, except that the first maturity date of any such bond may not be less than two years from the date of issuance. Bonds issued under this section must be in amounts as in the judgment of the board will be necessary for the project. The bonds must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on bond issues sold at public sale or to the state or any of its agencies or instrumentalities. The bonds must state upon their face the purpose for which they are issued and the project fund from which they are payable and must be signed by the chairman of the board and countersigned by the secretary of the district. The bonds must be payable serially in such amounts as the board determines, extending over a period of not more than thirty years.

**61-35-85. Bonds may be used in making payments on contract - Bonds payable out of fund on which drawn - May be used to pay special assessments.** Improvement bonds may be used in making payments on contracts for construction of the project for which the special assessment fund was created, or may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds, less accrued interest, must be credited to the construction account of the fund and must be used exclusively to pay those contracts and construction costs. Any balance remaining in any construction account after completion of any project must be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the bonds when paid.

**61-35-86. Refunding special assessment bonds - Purposes for which such bonds may be issued - Payment of bonds.** Any district having outstanding special assessment bonds, payable in whole or in part out of collections from special assessments, which are past due or which are redeemable, either at the option of the district or with the consent of the bondholders, may issue refunding special assessment bonds if there is not sufficient money in the project fund against which such bonds are drawn to pay the same. The issuance of refunding bonds must be authorized by resolution of the district board. The resolution must describe the bonds to be refunded and their amount and maturity. Refunding bonds may be issued for any of the following purposes:

1. To extend the maturities of bonds payable in whole or in part by special assessments.
2. To reduce the interest on the bonds.

Refunding bonds must bear such date, be in such date, be in such denominations, and mature serially within such time, not exceeding thirty years from date of issuance, as the board determines. The average rate of interest on the bonds may not exceed the average rate of interest on refunded bonds.

The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the bonds when paid. Any deficiency in any fund created for the payment of district bonds payable in whole or in part out of collections of special assessment taxes must be the general obligation of the district.

**61-35-87. Sale of property when general and special assessment taxes are delinquent.** Special assessments imposed under this chapter become due and delinquent and are subject to penalties for nonpayment at the same date and rates as first installments of real estate taxes. Real property must be sold to enforce the collection of special assessments or installments of special assessments which have become delinquent at the same time and in the same manner as provided in title 57. The sale must be made by the same officer making the sale as in the case of the sale of real property for general taxes. Delinquent general taxes and delinquent special assessments, or installments thereof, must be advertised and sold together in one sum and one certificate of sale must be issued therefor.

If real estate is sold for both delinquent general taxes and delinquent special assessments or installments of special assessments and there are no bidders, the county auditor shall strike off the parcel of land to the county and one certificate of sale covers both general taxes and special assessments that are delinquent.

If there is no delinquent general property tax against a tract or parcel of land and it is sold for special assessments alone, the certificate of tax sale must state that the sale was for special assessments and, if there is no private bidder the tax sale certificate and tax deed in such case must be issued in the usual course of procedure.

**61-35-88. Call for bids - Contents - Advertising.** Proposals for the work of making improvements provided for in this chapter that exceed fifty thousand dollars must be advertised for by the board in the official newspaper of the county where the district office is located once each week for two consecutive weeks. The board may cause the work on two or more improvements to be combined in one advertisement and one contract awarded pursuant to that advertisement. The advertisement for bids must:

1. Specify the work to be done according to the plans and specifications on file in the office of the district;
2. Call for bids upon the basis of cash payment for the work;
3. State the time within which the bids will be received; and
4. State the time within which the work on the improvement is to be completed.

The board may require bidders to state also the rate of interest, not exceeding seven percent per annum, which the bonds to be received and accepted by the bidder at par in payment for the work are to bear.

**61-35-89. Bid to be accompanied by a bond - Bond retained upon failure of bidder to contract - Amount of bond.** Each bid for any work to be done under this chapter must be accompanied by a separate envelope containing a bidder's bond in the amount of five percent of the amount of the bid, executed as provided in this chapter and running to the district that the bidder will enter into a contract for performance of the work in case a contract is awarded to the bidder. If any bidder to whom a contract is awarded fails or refuses to enter into the contract when

requested to do so, the bond accompanying the bidder's bid must be retained by the district as liquidated damages for the failure. The bond must be delivered to the district office and credited to the fund from which the consideration for the work is payable. The sufficiency of any bond filed by a bidder must be determined by the board at the time of considering bids.

**61-35-90. Execution of bidder's bond.** The bidder's bond must be executed by the bidder as principal and may be provided by a surety company authorized to do business in this state as surety, or by a bank letter of credit, a cash bond, or a certified check.

**61-35-91. Conditions of bidder's bond.** A bidder's bond must be made payable to the district and conditioned that if the principal's bid is accepted and the contract for the work of improvement awarded to the bidder, the bidder, within ten days after the acceptance of the bid, or within such further time as the board grants, will enter into and execute a contract bond in a sum equal to the amount of the bid, and a contract in writing to and with the district well and faithfully to perform and complete the work for which the bid was accepted, in accordance with the plans and specifications and the terms of the bid and within the time required by the terms of the contract, and that the bidder will pay for all the labor and materials used in such work. The bond must be for the benefit of the district.

**61-35-92. Bids - Filing - Sealing - Endorsing - Opening - Considering.** Bids for the work to be let under this chapter must be forwarded to the district office and must be sealed securely to prevent opening without detection. There must be endorsed upon the outside of the envelope containing the bid a statement of what work the proposal is for. The bids must be opened by the board at the expiration of the time limited in the advertisement for receiving the same, which may not be less than fifteen days after the first publication of the advertisement, or at such other time as the board may appoint. Only bids that are accompanied by the bond provided for in section 61-35-89 may be considered by the board.

**61-35-93. Opening of bids - Bids to be entered on minutes.** After the bids have been opened and made public, they must be entered upon the minutes of the meeting of the board of the district at which they are considered, and they must be preserved carefully by the district secretary.

**61-35-94. Rejection of bids - Readvertising for bids or construction by district without contract - Reevaluation of project.** If in its opinion the best interests of the district require, the board may reject any and all bids filed under this chapter. If all bids are rejected, the board may:

1. Readvertise for new bids;
2. Cause the work described in the plans, specifications, and estimates to be done directly by the district by the employment of labor and the purchase of materials required, or in any other manner the board considers proper, and payment for the work may be provided through special assessments in the same manner as though the work had been performed under contract, provided this work amounts to no more than fifty thousand dollars; or
3. Cause the work described in the plans, specifications, and estimates to be reviewed and reevaluated by the engineer for the district so that the board may determine whether the entire project or only a portion of the project is feasible.

**61-35-95. Engineer's statement of estimated cost required - Board to enter into contracts.** Before adopting or rejecting any bid filed under this chapter, the board shall require the engineer for the district to make a careful and detailed statement of the estimated cost of the work. The board may not award the contract to any bidder if the engineer's estimate prepared under this section exceeds the engineer's estimate prepared under section 61-35-54 by forty percent or more. If all bids are not rejected, the board shall award the contract to the lowest responsible bidder, upon the basis of cash payment for the work, if the bidder has furnished the certified check or bidder's bond required under the provisions of this chapter.

**61-35-96. Contractor's bond - Execution.** Within the time fixed by the board for executing the contract, the successful bidder shall file with the district a contract bond in a sum equal to the full amount of the contract. The bond must be executed by the bidder or contractor as principal and by a surety company authorized to do business in this state as surety.

**61-35-97. Conditions for contractor's bond.** The contractor's bond must be made payable to the district and must be conditioned:

1. That the contractor well and faithfully will perform the work bid for in accordance with the terms of and within the time provided for in the contract, and pursuant to the plans and specifications for the work on file in the district office;
2. That the contractor will pay for all labor and material used in that work; and
3. That in case of a default on the part of the bidder or contractor in the performance of the work as provided in the contract, the sum named in the bond must be taken and held to cover the amount necessary to compensate the district for the correction, repair, or replacement caused by the default, and that the full amount may be recovered from the bidder and the bidder's sureties in an action by the district against them on the bond only in the event of a complete failure of performance on the part of the contractor. Nothing in this section may be construed to prevent the district from receiving the amount, not in excess of the amount of the bond, necessary to compensate the district for correction, repair, or replacement caused by default of the contractor which does not constitute complete failure of performance by the contractor.

**61-35-98. Approval of bonds - Return of bidder's bond.** The contractor's bond must be approved by the governing body, and thereupon it is and remains in full force and effect. Upon the execution of the contract and the approval of the contract bond, the bidder's bond must be returned.

**61-35-99. Failure to execute contractor's bond.** If the successful bidder, within ten days after the acceptance of the bid or such further time as the board may grant, does not execute a contractor's bond and a contract for the completion of the work described in the bid, the board may cause the work to be done, or it may contract with some other contractor to do or complete the work. In that case, the district may recover in a suit on the defaulting bidder's bond the difference between the actual cost to the district of the improvements and the sum that it would have cost if the defaulting bidder had complied with the bidder's bid.

**61-35-100. Insufficiency of bonds - New bonds required - Failure to furnish.** If the board, at any time, deems the bond of a contractor insufficient either in form or

as to sureties, it may require the successful bidder or contractor to furnish, within such reasonable time as the board may fix, a new bond to be approved by the board. If the contractor fails, after notice, to furnish the new bond within the time required, the contractor's contract may be canceled, and in that event the contractor's bond will be liable as if the contractor had failed to perform the contract.

**61-35-101. Execution and filing of contract.** All contracts entered into for any work provided for in this chapter must be entered into in the name of the district and must be executed on the part of the district by the president and countersigned by the secretary. After the contract is signed by the contractor, it must be filed in the office of the district.

**61-35-102. Conditions and terms.** A contract let under this chapter requires the work to be done pursuant to the plans and specifications on file in the office of the district, subject to the approval of the engineer acting for the district, and must provide:

1. That the board has the right to suspend the work at any time for improper construction and to relet the contract or to order a reconstruction of the work as to any part improperly done.
2. The time within which the work must be completed.
3. The period of time for which the work must be guaranteed as to workmanship and materials.
4. The fund from which the contract price is to be paid by the district.
5. That the consideration expressed in the contract is payable only in bonds drawn on the fund described in the contract.
6. That the district assumes and incurs no general liability under the contract.
7. That failure of the engineer to reject work and materials that are not up to specifications and acceptance of the job by the engineer does not release the contractor from liability for any failure on the contractor's part to perform work or furnish materials in accordance with the plans and specifications.

The engineer acting for the district shall supervise and inspect the work during its progress. In addition to any rights a district may have under its contract for construction of part or all of an improvement after a contract has been awarded and before work under the contract has been completed, a district, with the consent of the contractor and without advertising for bids, may order additional work done by that contractor of the same character as the work that was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work; provided, that the total price payable to the contractor for the additional work may not exceed twenty percent of the amount estimated by the engineer for the district to be payable for that character of work under the original contract.

**61-35-103. Contractor to be paid during progress of work - Retainage - Failure to pay - Rate of interest - Investment of retainage.** If the contractor to whom a contract is let properly performs the work designated in the contract, the board, at least once in each calendar month during the continuance of the contract work, shall meet and receive and consider estimates furnished by the agent, engineer, or architect acting for the district or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the contract, subject to retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. Upon completion of ninety-five percent of the contract according to the estimates, the board may pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract must be paid to the contractor in such amounts and at such times as are approved by the district, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. Immediately after considering and allowing any such estimate, the board shall certify and forward the same to the district treasurer or other official having the power to draw bonds, who forthwith shall draw a warrant upon the proper fund and transmit the same promptly to the contractor. If the board fails or neglects to receive and allow such estimate or certify any estimate or final payment upon completion and acceptance or the proper officer required to issue such warrant fails or neglects to issue a warrant as provided in this section, for a period of more than thirty days from the date of such estimate or completion date, then the estimate or final payment, together with any retainage properly payable, draws interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant. Interest must be computed and added to the face of the estimate, final payment, or retainage by the officer required to issue the warrant, must be included in the warrant when drawn, and must be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained, as provided in this section, the board, authorized committee, or public body in charge of the work may invest or deposit the retained amounts in any financial association or institution in this state earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited must remain in the name of the board, authorized committee, or public body in charge of the work until final payment of all money due to the contractor is to be made. Further, a contractor may not use or pledge such account in any manner until released and received by the contractor upon completion of the contract.

Approved April 12, 1995

Filed April 13, 1995

# WEAPONS

## CHAPTER 602

### SENATE BILL NO. 2088

(Senators Nalewaja, Solberg, Robinson, Grindberg, Krebsbach)  
(Representative Clark)

### SHOTGUN AND HANDGUN DEFINED

AN ACT to amend and reenact subsections 6 and 14 of section 62.1-01-01 of the North Dakota Century Code, relating to the definition of a shotgun and a handgun.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 6 and 14 of section 62.1-01-01 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. "Handgun" means any firearm ~~having~~ that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long ~~that is not designed to be fired from the shoulder, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes the Thompson contender forty-five caliber single-shot center-fire with a pistol grip or similar firearm, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].~~
14. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired ~~from the shoulder and using~~ with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.

Approved April 11, 1995  
Filed April 12, 1995



# WEEDS

## CHAPTER 603

### HOUSE BILL NO. 1502

(Representatives Kerzman, Grosz)  
(Senators Bowman, Krauter)

### PEST DEFINITION

AN ACT to amend and reenact subsection 12 of section 63-01.1-02 of the North Dakota Century Code, relating to the definition of noxious weeds and pests.

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

**SECTION 1. AMENDMENT.** Subsection 12 of section 63-01.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. "Pest" means any pest as defined in section 4-33-01 and includes a prairie dog.

Approved April 7, 1995

Filed April 7, 1995

# WEIGHTS, MEASURES, AND GRADES

## CHAPTER 604

### HOUSE BILL NO. 1086

(Agriculture Committee)

(At the request of the Public Service Commission)

## WEIGHTS AND MEASURES STANDARDS AND FEES

AN ACT to amend and reenact sections 64-02-09, 64-02-10, 64-02-13, and 64-02-14 of the North Dakota Century Code, relating to standards of weights and measures and fees for testing weighing and measuring devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 64-02-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**64-02-09. Standards of weights and measures.** The commission shall maintain the following standards of weights and measures, which must conform to the United States standards:

1. ~~One bushel.~~
2. ~~One-half bushel.~~
3. ~~One peck.~~
4. ~~One-half peck.~~
5. ~~One quart.~~
6. ~~One wine gallon.~~
7. ~~One wine half-gallon.~~
8. ~~One wine quart.~~
9. ~~One wine pint.~~
10. ~~One wine gill.~~
11. One surveyor's chain, thirty-three standard feet in length.
12. ~~2.~~ One yard measure.
13. ~~3.~~ One foot measure.
14. ~~4.~~ One inch measure.
15. ~~5.~~ One one hundred pound weight.

- ~~16.~~ 6. One fifty pound weight.
- ~~17.~~ 7. One twenty-five pound weight.
- ~~18.~~ 8. One ten pound weight.
- ~~19.~~ 9. One one pound weight.
- ~~20.~~ 10. One half-pound weight.
- ~~21.~~ 11. One quarter-pound weight.
- ~~22.~~ 12. One one-eighth of a pound weight.
- ~~23.~~ 13. One one-sixteenth of a pound weight or one ounce weight.
- ~~24.~~ 14. One set of apothecaries' weights from one pound to one grain and one set of troy weights from one pound to one grain.
- ~~25.~~ 15. Other weighing and measuring devices necessary to test and calibrate standards.

These standards are the legal standards of weights and measures for this state, and must be used for testing the secondary standards used to test weighing or measuring devices.

**SECTION 2. AMENDMENT.** Section 64-02-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**64-02-10. Fees to test or calibrate weighing and measuring devices.** The commission shall collect the following fees to:

- |  |                  |
|--|------------------|
| 1. Test railroad track <u>or truck</u> scale   | \$97.00          |
| 2. <del>Test livestock or vehicle scale eight thousand pounds [3628.74 kilograms] capacity and under</del>   | <del>43.00</del> |
| 3. Test livestock and vehicle scale <del>over eight thousand pounds [3628.74 kilograms] capacity</del>   | 97.00            |
| 4. <del>Test livestock scale under the jurisdiction of Packers and Stockers Act of the federal department of agriculture</del>   | <del>97.00</del> |
| 5. <u>3.</u> Test livestock scale under the jurisdiction of Packers and Stockers Act of the federal department of agriculture, if the sales ring or buying station scale owner transports to the scale and furnishes all test weights and manpower needed to properly test the scale | 55.00            |
| 6. <u>4.</u> Test auxiliary beam on livestock, motor truck, motor truck dump scale   | 19.00            |

<del>7.</del>	Test road construction truck scale	97.00
<del>8.</del>	Test road construction hopper scale, six thousand and one pounds [2722.01 kilograms] capacity and over	43.00
<del>9.</del> <u>5.</u>	Test overhead monorail, track, hopper, dormant, deck, and hanging scale six thousand pounds [2721.55 kilograms] capacity and over	43.00
	Test overhead track, dormant, hanging, and hopper scale five thousand nine hundred ninety-nine pounds [2721.10 kilograms] and less capacity	24.00
<del>10.</del> <u>6.</u>	Test movable platform scale	8.00
<del>11.</del> <u>7.</u>	Test counter or computing scale	8.00
<del>12.</del>	Test every patent balance, beam steel yard, or other instrument used for weighing other than the above	8.00
<del>13.</del>	Test two bushel [70.40 liter] or one bushel [35.24 liter] measure	8.00
<del>14.</del>	Test other dry measure	8.00
<del>15.</del> <u>8.</u>	Test board of cloth measure	8.00
<del>16.</del> <u>9.</u>	Test liquid or gas computing pump	8.00
<del>17.</del>	Test liquid or gas computing pump in addition to the regularly scheduled annual inspection, including inspections made for new equipment which replaces a rejected measuring device	8.00
<del>18.</del> <u>10.</u>	Test or calibrate weighing and measuring standards, per metrologist, per quarter hour or fraction thereof	12.50
<del>19.</del> <u>11.</u>	Test mobile delivery gasoline and fuel oil meter	19.00
<del>20.</del> <u>12.</u>	Test gasoline, LPG, or fuel oil meter on common carrier pipelines, or any other meter used in loading railway cars, transports,	

	or other conveyances	43.00
<del>21.</del> 13.	Test propane, <u>ag chemical</u> , or liquid fertilizer meter	31.00
<del>22.</del>	Test truck tank of one thousand gallons [3785.41 liters] capacity and under	<del>36.00</del>
	Test truck tank between one thousand and one gallons [3785.41 liters] and six thousand gallons [22712.47 liters]	40.00
14.	Test truck tank above six thousand gallons [22712.47 liters]	61.00
<del>23.</del>	Test crane scale six thousand pounds [2721.55 kilograms] and less capacity	<del>36.00</del>
15.	Test crane scale six thousand and one pounds [2722.01 kilograms] capacity and over	61.00
<del>24.</del> 16.	Test or calibrate weighing and measuring devices other than the above and those set by rule, per inspector per quarter hour or fraction thereof	9.00
17.	Witnessing any of the above tests	<u>Fifty percent of the applicable fee</u>

When a rejected weighing or measuring device has been reconditioned or replaced by new equipment, it must be retested and certified before being put into use except as otherwise provided by rule. The fee for retest and certification is the same as for the first test and certification.

When a test of a weighing or measuring device is required in addition to the regularly scheduled annual test, a charge of sixty cents per mile [1.61 kilometers] will be made unless the motor vehicle, including the testing equipment necessary to perform the test weighs less than ten thousand pounds [4535.92 kilograms] gross. If the motor vehicle weighs less than ten thousand pounds [4535.92 kilograms] gross, a charge of thirty-five cents per mile [1.61 kilometers] will be made, and all mileage charges are in addition to the regular test fee to cover the costs of the additional travel. Where a test has been requested and the person requesting it fails to appear or to have the weighing or measuring device ready for testing at the arranged time, there is a charge of nine dollars a quarter hour for the time between the arranged time and the time at which the test can begin.

**SECTION 3. AMENDMENT.** Section 64-02-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**64-02-13. Commission to test weighing or measuring devices annually.** The commission may test or calibrate weighing or measuring devices annually. The owner of any weighing or measuring device used in this state is responsible for its accuracy and condition, and ~~shall~~ may have it tested at least annually, but must have it tested at least every fifteen months. If upon testing the weighing or

measuring device is within the permitted tolerance, it must be sealed. Inspections and testing of farm milk bulk tank equipment may be made only by the state dairy department under section 4-30-18. Inspections and testing of oil and gas production meters and measuring devices may be made only by or under the direction of the industrial commission under section 38-08-04. If upon complaint the commission finds the weighing or measuring device is within the permitted tolerance, the cost of the test, unless waived by the commission, must be paid by the complainant; and in all other cases the cost of testing must be paid by the owner of the equipment.

**SECTION 4. AMENDMENT.** Section 64-02-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**64-02-14. Incorrect weighing or measuring devices - Power to seize, condemn, and destroy.** The commission shall condemn, seize, or destroy any incorrect weighing or measuring device which cannot be satisfactorily repaired. Those weighing or measuring devices which are incorrect but which are capable of being repaired must be marked as ~~"condemned"~~ "rejected for repair" in the manner set by the commission. The owner or user of a weighing or measuring device which has been so marked shall have it repaired or corrected within thirty days, and the device may not be used or disposed of within that thirty-day period without the consent of the commission.

Approved March 24, 1995

Filed March 27, 1995

# WORKERS' COMPENSATION

## CHAPTER 605

### HOUSE BILL NO. 1217

(Representatives Wald, Kretschmar, Carlson)  
(Senators Christmann, Robinson, Kinnoin)

## WORKERS' COMPENSATION LAW JUDICIAL REVIEW

AN ACT to amend and reenact section 65-01-01 of the North Dakota Century Code, relating to the purposes of the workers' compensation law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 65-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-01-01. Purposes of compensation law - Police power.** The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for workers injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for ~~such~~ those personal injuries and all jurisdiction of the courts of the state over ~~such~~ those causes are abolished except as is otherwise provided in this title. A civil action or civil claim arising under this title which is subject to judicial review, must be reviewed solely on the merits of the action or claim. This title may not be construed liberally on behalf of any party to the action or claim.

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 606****HOUSE BILL NO. 1366**

(Representatives Skarphol, Soukup, Shide)  
(Senators Grindberg, Robinson, Tallackson)

**WORKERS' COMPENSATION AVERAGE WEEKLY  
WAGE**

AN ACT to amend and reenact subsection 4 of section 65-01-02 of the North Dakota Century Code, relating to the definition of average weekly wage for purposes of determining workers' compensation benefits; and to provide an effective date.

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

<sup>281</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Average weekly wage" means the weekly wages the employee was receiving from all employments at the time of injury. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
  - a. The "average weekly wage" of a self-employed employee is determined by the following formula: net profits based on preceding tax year or preceding fifty-two weeks whichever is higher, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.
  - b. Hourly or daily rate multiplied by number of hours or days worked per seven-day week<sub>2</sub>.
  - c. Monthly rate multiplied by twelve months and divided by fifty-two weeks<sub>2</sub>.
  - d. Biweekly rate divided by two<sub>2</sub>.
  - e. In seasonal employment, the average weekly wage is one-fiftieth of the total wages the employee has earned from all occupations during the twelve calendar months immediately preceding the injury

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<sup>281</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1252, chapter 608; section 24 of Senate Bill No. 2037, chapter 456; and section 1 of Senate Bill No. 2085, chapter 610.



or one-fiftieth of the average annual income for the three-year period immediately preceding the injury, whichever is greater.

- f. If the average weekly wage of an employee cannot be ascertained, the wage for the purposes of calculating compensation ~~must be taken to be~~ is the usual wage paid other employees engaged in ~~like~~ or similar occupations where the wages are fixed; ~~or.~~
- ~~f.~~ g. If there are special circumstances under which the average weekly ~~wages~~ wage cannot be reasonably and fairly determined by applying subdivisions a through e ~~f,~~ an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked; ~~whichever~~ if that number is less than fifty-two.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for all claims filed after July 31, 1995.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 607

## HOUSE BILL NO. 1225

(Representatives Wald, Keiser, Kelsch, Kempenich)  
(Senators Mutch, Krebsbach)

COMPENSABLE INJURY FOR WORKERS'  
COMPENSATION PURPOSES

AN ACT to amend and reenact subsection 9 of section 65-01-02 of the North Dakota Century Code, relating to the definition of compensable injury for workers' compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>282</sup> SECTION 1. AMENDMENT. Subsection 9 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Compensable injury" means an injury by accident arising out of and in the course of employment which must be established by medical evidence supported by objective medical findings.
  - a. The term "compensable injury", in addition to an injury by accident, includes:
    - (1) Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed ~~shall~~ are not ~~be~~ compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of ~~his~~ employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It ~~need~~ does not have ~~been~~ to be foreseen or expected, but after it is contracted, it must ~~appear to~~ have had its origin in a risk connected with the employment and ~~to~~ have flowed from that source as a rational consequence. ~~However, preventative~~ Preventive treatment for communicable diseases is not compensable under this title.
    - (2) An injury to artificial members.

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<sup>282</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1366, chapter 606; section 1 of House Bill No. 1252, chapter 608; section 24 of Senate Bill No. 2037, chapter 456; and section 1 of Senate Bill No. 2085, chapter 610.

- (3) Injuries due to heart attack or other heart-related disease, stroke, and mental or physical injury precipitated by mental stimulus, which must be causally related to the employee's employment, with reasonable medical certainty, and which must have been precipitated by unusual stress.
  - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
  - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- b. The term does not include:
- (1) ~~An~~ A willfully self-inflicted injury, an injury caused by the employee's willful intention to commit suicide or to injure or kill himself, herself, or another, which includes those instances where the including injury or aggravation thereof of an injury, which results from the employee's suicide or attempted suicide.
  - (2) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
  - (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.
  - (4) An injury that arises out of ~~the commission~~ of an illegal act committed by the injured employee.
  - (5) An injury that arises out of an employee's ~~purely~~ voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
  - (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. ~~However, it~~ It is insufficient, however, to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of such the employment trigger, unless the employment trigger is also deemed determined to be a substantial aggravating or accelerating factor. An underlying condition is a preexisting injury, disease, or infirmity.
  - (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.

- (8) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment injury.
- (9) A mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except ~~such~~ an action that is the intentional infliction of emotional harm.

Approved March 31, 1995

Filed March 31, 1995

**CHAPTER 608****HOUSE BILL NO. 1252**

(Representatives Skarphol, Monson, Carlson)

(Senators Andrist, Mutch, Krauter)

**COMPENSABLE INJURY UNDER WORKERS' COMPENSATION**

AN ACT to amend and reenact subsection 9 of section 65-01-02 of the North Dakota Century Code, relating to the definition of compensable injury for workers' compensation purposes.

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

<sup>283</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Compensable injury" means an injury by accident arising out of and in the course of employment.

a. The term "compensable injury", in addition to an injury by accident, includes:

- (1) Any disease ~~which~~ that can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed ~~shall~~ are not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of ~~his~~ employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It need not have been foreseen or expected, but after it is contracted, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. However, preventative treatment for communicable diseases is not compensable under this title.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack, stroke, and ~~mental or~~ physical injury precipitated by mental stimulus, which must be causally related to the employee's employment, with reasonable

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<sup>283</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1366, chapter 606; section 24 of Senate Bill No. 2037, chapter 456; and section 1 of Senate Bill No. 2085, chapter 610.

medical certainty, and which must have been precipitated by unusual stress.

- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
  - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- b. The term does not include:
- (1) An injury caused by the employee's willful intention to injure or kill himself, herself, or another, which includes those instances where the injury or aggravation thereof results from the employee's suicide or attempted suicide.
  - (2) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
  - (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.
  - (4) An injury that arises out of the commission of an illegal act by the injured employee.
  - (5) An injury that arises out of an employee's purely voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
  - (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. However, it is insufficient to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of such employment trigger, unless the employment trigger is also deemed a substantial aggravating or accelerating factor. An underlying condition is preexisting injury, disease, or infirmity.
  - (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.
  - (8) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment injury.

- (9) A mental injury arising from mental stimulus or a mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except ~~such~~ an action that is the intentional infliction of emotional harm.

Approved April 3, 1995  
Filed April 3, 1995

**CHAPTER 609****SENATE BILL NO. 2280**

(Senators Krauter, O'Connell, Sand)  
(Representatives Aarsvold, Kerzman, Kunkel)

**TOWNSHIP EMPLOYEES UNDER WORKERS'  
COMPENSATION**

AN ACT to amend and reenact subsection 16 of section 65-01-02 of the North Dakota Century Code, relating to the definition of employer for workers' compensation purposes.

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

<sup>284</sup> **SECTION 1. AMENDMENT.** Subsection 16 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. "Employer" means:

- a. The state and all political subdivisions thereof.
- b. All public and quasi-public corporations in this state.
- c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
- d. The legal representative of any deceased employer.
- e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation, having one or more employees as herein defined.
- f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
- g. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.

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<sup>284</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1366, chapter 606; section 1 of House Bill No. 1252, chapter 608; section 24 of Senate Bill No. 2037, chapter 456; and section 1 of Senate Bill No. 2085, chapter 610.



- h. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 610****SENATE BILL NO. 2085**

(Senator Solberg)

**FAIRLY TRACEABLE TO EMPLOYMENT DEFINED  
FOR WORKERS' COMPENSATION**

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to the eligibility of a full-time paid firefighter or law enforcement officer for workers' compensation benefits; and to amend and reenact subsection 18 of section 65-01-02 of the North Dakota Century Code, relating to the definition of "fairly traceable to the employment" for purposes of workers' compensation.

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

<sup>285</sup> **SECTION 1. AMENDMENT.** Subsection 18 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease ~~which~~ that:
- a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
  - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
  - c. Can be fairly traced to the employment; or
  - d. However, any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic,

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<sup>285</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1366, chapter 606; section 1 of House Bill No. 1252, chapter 608; and section 24 of Senate Bill No. 2037, chapter 456.

poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid firefighter or law enforcement officer has completed ~~two~~ five years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition. An employer shall require a physical examination upon employment, and annually thereafter, for any employee subject to this subdivision. Results of the examination must be used in rebuttal to a presumption afforded under this subdivision. For purposes of this subdivision, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

**SECTION 2.** A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Yearly documentation required for firefighter and law enforcement officer. Except for benefits for exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under subdivision d of subsection 18 of section 65-01-02 unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years. Any full-time paid firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section until July 1, 1997.

Approved April 13, 1995  
Filed April 18, 1995

## CHAPTER 611

## HOUSE BILL NO. 1224

(Representatives Carlson, Koppelman, Kelsch, Soukup)  
(Senators Kinnoin, Wanzek)

## WORKERS' COMPENSATION BENEFITS

AN ACT to amend and reenact section 65-01-11 of the North Dakota Century Code, relating to the denial of workers' compensation benefits due to use of alcohol or controlled substances.

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

SECTION 1. AMENDMENT. Section 65-01-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-01-11. Burden of proof in compensation matters - Death certificate.** If the bureau or an employer claims that an employee is not entitled to the benefits of the North Dakota Workers' Compensation Law by reason of the fact that the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving such exemption or forfeiture is upon the bureau or upon the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in 49 CFR ~~383.52~~ 383.51 or a level of an illegally used controlled substance sufficient to cause impairment found by a test required by a physician, qualified technician, chemist, or registered nurse and performed as required by the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level in part 40, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate must be considered as evidence of death and may not be used to establish the cause of death. ~~If the employee can prove by a preponderance of the evidence, within one year of a denial based upon impairment caused by the use of alcohol or the illegal use of a controlled substance, that the employee has successfully completed treatment with a licensed addiction facility, the employee's benefits must be reinstated. Costs for treatment under this section may not be paid by the bureau.~~

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 612****SENATE BILL NO. 2377**

(Senators Nalewaja, Goetz, Krebsbach, Lindaas)  
(Representative Byerly)

**WORKERS' COMPENSATION ADVISER PROGRAM**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to the establishment of a workers' compensation adviser program; to provide an effective date; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Workers' adviser program.** A workers' adviser program is established. The program is independent of the claims department of the workers compensation bureau and activities administered through the program must be administered in accordance with this title. The program must provide assistance to an injured employee, including acting on behalf of an injured employee who is aggrieved by a decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and advising an injured employee of the effect of decisions made by the bureau, the employee, or an employer under this title. The bureau shall employ a director of the program, support staff for the program, and other personnel determined to be necessary for the administration of the program. Personnel employed to administer the program may not act as an attorney for an injured employee. The bureau may not pay attorney fees to an attorney who represents an injured employee in a disputed claim before the bureau unless the injured employee has first attempted to resolve the dispute through the workers' adviser program. An injured employee who contacts the program for assistance within the appeal period after an administrative order has been issued is deemed to have satisfied the requirement of requesting an administrative hearing or an arbitration hearing on that order. The information contained in a file established by the workers' adviser program on an injured employee's disputed claim is not subject to discovery and may not be used as evidence in subsequent proceedings relative to that dispute.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for all disputed claims arising after July 31, 1995.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 1999, and after that date is ineffective.

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 613****HOUSE BILL NO. 1226**

(Representatives Wald, Skarphol, Froseth)  
(Senators Andrist, Grindberg, Kelsh)

**WORKERS' COMPENSATION REINSURANCE**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to allowing reinsurance for workers' compensation; to amend and reenact section 65-02-06 of the North Dakota Century Code, relating to expenditures by the workers compensation bureau; and to provide a continuing appropriation.

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

<sup>286</sup> **SECTION 1. AMENDMENT.** Section 65-02-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-06.** Expenditures by bureau from fund - Employment of full-time assistant attorney general authorized. ~~With prior approval of the emergency commission, the bureau may make necessary expenditures to implement reinsurance.~~ The bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this title. The salaries and compensation of the director of the bureau and of all employees of the bureau, and all other authorized expenses ~~thereof~~ of the bureau, including the premium on the bond required of the state treasurer under section 65-04-30, must be paid out of the fund. The bureau may employ as its full-time attorney a duly appointed assistant attorney general and pay from the fund the entire salary of the assistant.

**SECTION 2.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Expenditures by bureau for reinsurance - Report to budget section. There is appropriated out of the workers' compensation fund, as a continuing appropriation, an amount necessary to allow the bureau to establish a program of reinsurance. The bureau may execute a contract for reinsurance which is binding on the bureau and the reinsurer. The term identified in the contract may extend past the end of the biennium in which the contract is executed. The bureau shall report to the legislative council's budget section annually on any contract negotiated between the bureau and an insurer for reinsurance.

Approved March 10, 1995  
Filed March 10, 1995

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<sup>286</sup> Section 65-02-06 was also amended by section 2 of House Bill No. 1439, chapter 504.

## CHAPTER 614

## HOUSE BILL NO. 1208

(Representatives Wald, Skarphol, Bernstein)  
(Senators Kinnoin, B. Stenehjelm, Traynor)

WORKERS' COMPENSATION ATTORNEY FEES AND  
ARBITRATION

AN ACT to amend and reenact sections 65-02-08, 65-02-15, 65-02-20, subsection 1 of section 65-05.1-06.1, and section 65-10-03 of the North Dakota Century Code, relating to workers' compensation attorney fees; to repeal sections 65-02-17 and 65-02-18 of the North Dakota Century Code, relating to binding arbitration; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 65-02-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau.** The bureau shall adopt ~~such rules; not inconsistent with this title, as may be necessary to~~ carry out this title. All fees on claims for legal, medical, and hospital services rendered under this title to ~~any claimant~~ an injured employee must be in accordance with schedules of fees adopted ~~or to be adopted~~ by the bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee on administrative rules before submission to the legislative council for publication. The bureau shall establish, by administrative rule, a reasonable maximum hourly rate and a maximum fee to compensate ~~claimants' attorneys~~ an injured employee's attorney for legal services following ~~constructive denial of a claim; notice of informal decision; or~~ issuance of an administrative order under chapter 28-32 reducing or denying benefits. ~~"Constructive denial" means failure to~~ The bureau shall issue an administrative order within sixty days of the date when all elements of initial filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. All attorneys' The bureau shall pay an injured employee's attorney's fees and costs must be paid from the bureau general fund. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay ~~attorneys' an attorney's~~ an attorney's fees ~~as follows~~ when:

1. The employee has prevailed in binding dispute resolution under section 65-02-20; or
2. ~~The dispute is referred to binding arbitration under section 65-02-17;~~
3. ~~The employee has prevailed after reconsideration of an informal decision under section 65-01-14;~~
4. The employee has prevailed after an administrative hearing under chapter 28-32;

5. If there has been constructive denial of a claim, the bureau shall only pay attorneys' fees from the occurrence of the constructive denial until the bureau issues a notice of informal decision or administrative order; or
6. As otherwise provided by administrative rule.

The bureau shall adopt administrative rules for the payment of an employee's attorney's fees when an employee's request for binding arbitration is rejected by the employer. Nothing provided herein may be construed to. This section does not prevent a claimant an injured employee or an employer from hiring or paying his or her own an attorney; however, the claimant's employee's attorney may not seek or obtain costs or attorney's fees from both the bureau and the claimant employee relative to the same services. The bureau may deny attorneys' fees upon a finding that the claim is frivolous. All disputes relating to payment or denial of attorneys' fees an attorney's fee must be submitted to binding arbitration by a fee arbitration panel composed of one member selected by the claimant's attorney; one member selected by the bureau; and one member selected jointly by the claimant's attorney and the bureau. An attorney who agrees to accept compensation from the bureau for services pursuant to this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees the hearing officer or arbitrator for decision.

**SECTION 2. AMENDMENT.** Section 65-02-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-15. Workers' compensation binding arbitration - Qualified arbitrator - Regions.** The bureau shall divide the state into four regions for the purpose of holding arbitration proceedings. The appropriate region is the region in which the employee resides. If the employee resides out of state, the appropriate region is the region of the situs of employment. The bureau shall provide staff services to the panel members. The salaries and expenses of the panel must be paid from money appropriated to the bureau for that purpose. The process for choosing arbitrators and qualifications for arbitrators must be outlined by rule. The employee can request and the bureau may allow a change of arbitrator upon a showing of just cause. A dispute between the bureau and an injured employee must be resolved by arbitration when the dispute concerns an amount no greater than three thousand dollars. If the amount in dispute is greater than three thousand dollars, the dispute may not be resolved through arbitration. The bureau shall adopt rules to establish how the amount of the dispute is determined. The bureau may hire arbitrators based upon criteria the bureau determines relevant, including education, training, and experience. The bureau shall pay an injured employee's attorney's fee only when the employee prevails. The bureau shall adopt rules to establish a maximum fee for an injured employee's attorney. An attorney's fee may not exceed twenty percent of the amount awarded. Payment of a disputed amount pursuant to an arbitration award does not establish the bureau's liability for any issue not raised during the arbitration proceeding and does not establish the bureau's liability for any underlying condition. The arbitration process may not be used for determinations of compensability of medical conditions. The bureau retains continuing jurisdiction over the arbitration proceeding under section 65-05-04. An arbitration decision that is not revoked or modified by the bureau under section 65-05-04 is final and not reviewable by any court.

**SECTION 3. AMENDMENT.** Section 65-02-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:



**65-02-20. Bureau to establish managed care program.** The bureau shall establish a managed care program with a third-party administrator to effect the best medical solution for an injured employee. The managed care system must allow for a third-party administrator to direct the program for medical care of the injured employee upon a finding by the bureau that the employee suffered a compensable injury. The managed care administrator shall operate according to guidelines adopted by the bureau to ensure that an injured employee receives appropriate medical treatment in a cost-effective manner. The managed care administrator shall assist the bureau in the medical management of claims within the bounds of workers' compensation law. If an employee, employer, or medical provider disputes the recommendation of the managed care administrator, the employee, employer, or medical provider may request binding dispute resolution on the recommendation. The bureau shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-14 or ~~65-02-17~~ **65-02-15**. A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion by the dispute resolution panel. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

**287 SECTION 4. AMENDMENT.** Subsection 1 of section 65-05.1-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Within sixty days of receipt of the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to lost-time and vocational rehabilitation services. ~~The bureau shall establish, by rule, an hourly rate to compensate an employee's attorney from the date the bureau has notified the employee to be available for testing under subsection 7 of section 65-05.1-02. The bureau may establish, by rule, absolute maximum fees for such representation.~~

**SECTION 5. AMENDMENT.** Section 65-10-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-10-03. Cost of appeal and attorney's fee fixed by the bureau.** ~~The bureau shall pay the cost of the judicial appeal and an the attorney's fee for the claimant's an injured employee's attorney must be borne by the bureau when the claimant employee prevails. The claimant employee is deemed to have prevailed when any part of the decision of the bureau is reversed or the claim is remanded to the bureau for further administrative proceedings. In an appeal by the bureau to the North Dakota supreme court, the claimant shall recover costs and attorneys' fees incurred in responding to the appeal. The bureau shall pay such the attorney's fee from the~~

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<sup>287</sup> Section 65-05.1-06.1 was also amended by section 4 of House Bill No. 1253, chapter 628.

bureau general fund. The amount of ~~such~~ the attorney's fee must be determined in the same manner as prescribed by the bureau for attorney fees, and the amount of attorney's fee already allowed in administrative proceedings before the bureau must be taken into consideration. The bureau shall; ~~pursuant to section 65-02-08,~~ establish, pursuant to section 65-02-08, a maximum fee to be paid in an appeal; ~~provided that the.~~ The maximum fee may be exceeded upon application of the ~~claimant injured employee~~ and approval of the court, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex. Notwithstanding the foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.

**SECTION 6. REPEAL.** Sections 65-02-17 and 65-02-18 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 7. EFFECTIVE DATE.** This Act applies to any request for arbitration, hearing, or appeal taken from an administrative order issued after August 1, 1995.

Approved March 29, 1995

Filed March 29, 1995

## **CHAPTER 615**

### **HOUSE BILL NO. 1287**

(Representatives Kelsch, Carlson, Mahoney, Poolman)  
(Senators Krebsbach, Traynor)

## **WORKERS' COMPENSATION HEARING OFFICER QUALIFICATIONS**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to requiring a hearing officer of the workers compensation bureau to be a person licensed to practice law in this state.

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

**SECTION 1.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Hearing officer - Qualifications - Location.** A hearing officer designated by the bureau under chapter 28-32 must be a person licensed to practice law in this state. A hearing officer designated by the bureau may not maintain an office within the bureau from which the hearing officer conducts daily business. This section does not preclude a hearing held pursuant to chapter 28-32 from being held within the bureau.

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 616

### HOUSE BILL NO. 1190

(Representatives Soukup, Skarphol, Aarsvold)  
(Senators Traynor, Kinnoin, Robinson)

## WORKERS' COMPENSATION FRAUD UNIT

AN ACT to create and enact four new sections to chapter 65-02 of the North Dakota Century Code, relating to a workers' compensation fraud unit, immunity from civil liability, nondisclosure of investigative information, and immunity from criminal prosecution; and to amend and reenact sections 65-04-14 and 65-05-33 of the North Dakota Century Code, relating to penalties for misrepresenting payroll or for filing false claims or false statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Workers' compensation fraud unit. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of willful misrepresentation of payroll to the bureau by an employer as described under section 65-04-14 and to investigate and review any alleged case of willful filing of a false claim or false statement in relation to a claim as defined under section 65-05-33. The unit shall refer a case of willful misrepresentation of payroll to the bureau or of willful filing of a false claim or false statement for prosecution.

SECTION 2. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Immunity from civil liability. A person who notifies the bureau or who assists the bureau on any matter pertaining to the administration of this title of an alleged violation of section 65-04-14 or 65-05-33, or who provides information in the course of an investigation of an alleged violation of section 65-04-14 or 65-05-33, is not subject to civil liability for that action if the action was in good faith and without malice. At the request of the person who notifies or assists the bureau or who provides information to the bureau, the bureau may not reveal the identity of that person or disclose any information that may reveal the identity of that person to any person other than a representative of or a person rendering assistance to the bureau.

SECTION 3. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Amnesty for certain claims and accounts. After the workers' compensation fraud unit is established, the bureau may offer a period of amnesty to any person who has willfully made a false claim or false statement or who has willfully misrepresented payroll, to allow that person the opportunity to close and repay the false claim, to close and repay the claim for which a false statement has been made, or to pay the appropriate premium and penalty on an account for which payroll was misrepresented. The amnesty period may not exceed sixty days. A person who

receives amnesty under this section is immune from criminal prosecution relating to those acts for which amnesty is received.

**SECTION 4.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Nondisclosure of investigative information. Any investigative information gathered pursuant to section 1 of this Act is criminal investigative information and may not be disclosed except as provided in section 44-04-18.7.

<sup>288</sup> **SECTION 5. AMENDMENT.** Section 65-04-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty.** Any employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is liable to the state in ten times the amount of the difference between the premium paid and the amount the employer should have paid. The liability to the state under this section must be enforced in a civil action in the name of the state, and all sums collected under the section must be paid into the fund. Any employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is guilty of a class A misdemeanor, but if the difference between the premium paid and the amount the employer should have paid is more than five hundred dollars, the offense is a class C felony.

**SECTION 6. AMENDMENT.** Section 65-05-33 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05-33. Filing false claim or false statements - Penalty.** Any person claiming benefits or payment for services under this title, who willfully files a false claim or makes a false statement, or willfully fails to notify the bureau as to the receipt of income, or an increase in income, from employment, after the issuance of an order awarding benefits, in connection with any claim or application under this title is guilty of a class A misdemeanor, but if the act is committed to obtain, or pursuant to a scheme to obtain, more than five hundred dollars in benefits or services, the offense is a class C felony. Provided further that:

1. For the purposes of this section, "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test results, or other evidence of loss, injury, or expense.
2. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall:

a. **Reimburse** reimburse the bureau for any benefits paid based upon the false claim or false statement; and, if applicable, under section 65-05-29:

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<sup>288</sup> Section 65-04-14 was also amended by section 3 of House Bill No. 1329, chapter 619.

- b. ~~Forfeit~~ and shall forfeit any additional benefits relative to that injury.

Approved March 28, 1995

Filed March 29, 1995

## CHAPTER 617

## SENATE BILL NO. 2403

(Senators Solberg, Krauter, Krebsbach)  
(Representatives Austin, Christopherson, Klein)

EMPLOYER EXPERIENCE RATING AND RATES FOR  
WORKERS' COMPENSATION

AN ACT to amend and reenact sections 65-04-01 and 65-04-17 of the North Dakota Century Code, relating to classification of employments for workers' compensation premium rates and the experience rating of employers by the workers compensation bureau; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-01. Classification of employments - Premium rates - Requirements.**

1. The bureau shall classify employments with respect to their degrees of hazard, determine the risks of different classifications, and fix the rate of premium for each of ~~said~~ the classifications sufficiently high to provide for:
  - ~~1-~~ a. The payment of the expenses of administration of the bureau;
  - ~~2-~~ b. The payment of compensation according to the provisions and schedules contained in this title; and
  - ~~3-~~ c. The maintenance by the fund of adequate reserves and surplus to the end that it may be kept at all times in an entirely solvent condition.
2. In the exercise of the powers and discretion conferred upon it, the bureau shall fix and maintain for each class of occupation, the lowest rate which still will enable it to comply with the other provisions of this section.
3. Before the effective date of any premium rate change, the bureau shall hold a public hearing on the rate change. Chapter 28-32 does not apply to a hearing held by the bureau under this subsection.

SECTION 2. AMENDMENT. Section 65-04-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-04-17. Experience rating of employers.** The bureau may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the bureau may establish from time to time.

In calculating the experience rating, the bureau shall determine the maximum and minimum rates for each employment classification by:

1. Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and
2. Multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.

The bureau may not amend its experience rating system by emergency rulemaking.

**SECTION 3. LEGISLATIVE COUNCIL STUDY.** During the 1995-1996 interim, the legislative council shall study the feasibility and desirability of the workers compensation bureau establishing a system through which injured workers whose disability benefits cease upon reaching retirement age under 1995 House Bill No. 1228 would receive a pension or an annuity in lieu of further disability benefits. The legislative council shall review the different methods through which the pension or annuity would be established and paid, who would be responsible for administering the pension or annuity, and to which injured workers the pension or annuity would be paid. The bureau shall provide information to the legislative council necessary to facilitate the study.

Approved April 13, 1995

Filed April 18, 1995



## CHAPTER 618

HOUSE BILL NO. 1219  
(Representative Keiser)

## WORKERS' COMPENSATION THIRD-PARTY CLAIMS

AN ACT to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to employer relief for third-party lawsuit recovery; to amend and reenact section 65-05-07.2 of the North Dakota Century Code, relating to requiring a third party to pay the workers compensation bureau for certain claims; and to provide an effective date.

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

SECTION 1. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Employer relief for third-party recovery. The bureau, upon recovery of its subrogation interest after a third-party lawsuit under section 65-01-09, shall give relief to the employer from the date of injury for the amount of the recovery up to the actual amount expended on a claim charged against the employer's account. For purposes of this section, "relief" means the amount of money recovered by the bureau in a third-party action will be deducted from the amount charged against the employer's experience rating.

SECTION 2. AMENDMENT. Section 65-05-07.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05-07.2. Employer required Payment to pay bureau for certain claims.** The employer shall reimburse the bureau for all medical expenses related to a compensable injury to an employee if the expenses are not more than two hundred fifty dollars and shall reimburse the bureau for the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. If an employee's compensable injury is determined through a civil action to have been sustained through the fault or negligence of a third person, or if a settlement has been entered between the employee and a third person through which the third person agrees to compensate the employee for the injury, the bureau, upon receipt of its subrogation interest, shall credit the account of the employer to the extent of the payment made by the employer to the bureau under this section. Upon the bureau's determination that the claim is compensable, the bureau shall pay the medical expenses associated with the claim and notify the employer of payments to be made by the employer under this section. If the employer does not pay the bureau within ninety days of notice by the bureau, the bureau may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer. The bureau shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. When the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the bureau shall pay all further medical expenses pursuant to this title. This section is effective for all compensable injuries that occur after ~~June 30, 1991~~ July 31, 1995.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act is effective for all accounts affected by a third-party recovery received by the bureau after July 31, 1995.

Approved March 7, 1995

Filed March 7, 1995

## CHAPTER 619

## HOUSE BILL NO. 1329

(Representatives Skarphol, Wald, Oban, Clark)  
(Senators Kinnoin, Robinson)

WORKERS' COMPENSATION PENALTIES AND  
PAYMENTS

AN ACT to amend and reenact sections 65-04-12, 65-04-13, 65-04-14, 65-04-19, 65-04-23, 65-04-24, 65-04-26.1, 65-04-27, 65-04-27.1, 65-09-01, 65-09-02, 65-09-03, and 65-09-04 of the North Dakota Century Code, relating to penalties for failure to obtain workers' compensation coverage and submit payroll reports, penalties for refusal to permit inspection of books, penalties for filing false payroll reports, calculation of premium due, penalties for default in payments to the workers compensation bureau, actions for collection of delinquent premium, corporate officer liability, payment of claims for employees of employers who are in default, and injunctions against employers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-12 of the North Dakota Century Code is amended and reenacted as follows:

65-04-12. Penalties for failure to obtain coverage or to make payroll reports - How collected - Disposition. Any An employer knowing himself to be who knows that the employer is subject to the operation of the provisions of this title and who shall fail fails to report himself the employer's status as an employer to the bureau as such shall be is liable to for a penalty to be fixed established by the bureau in an amount not exceeding one to exceed two and one-half times the premium which that would have been paid on payroll expenditures during the periods not reported. Any An employer who shall fail fails or refuse refuses to furnish to the bureau the annual payroll report and estimate, or who shall fail fails or refuse refuses to furnish such other information as may be required by the bureau under authority of this chapter shall be is subject to a penalty to be fixed established by order of the bureau in an amount not exceeding five hundred to exceed two thousand dollars. Such penalties The bureau shall be collected collect a penalty imposed under this section in a civil action brought against the defaulting employer in the name of the state. Any such penalty, when collected The bureau shall be paid into deposit a penalty collected under this section to the credit of the fund and shall become a part thereof.

SECTION 2. AMENDMENT. Section 65-04-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-13. Books, records, and payrolls of employers subject to audit and inspection - Penalty for refusal to permit inspection. All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of the employers, ~~must be~~ are open always for inspection by the bureau or any of its traveling auditors, inspectors, or assistants for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of employees, and any other information ~~as may be necessary for the uses and purposes of the bureau in its administration of to administer~~ this title. ~~Refusal on the part of any An employer who refuses~~ to submit the employer's books, records, and

payrolls for ~~the inspection of by the bureau, or of a traveling its~~ auditor, inspector, or assistant presenting written authority from the bureau, ~~subjects the employer is subject to a penalty of one five hundred dollars for each offense; the same to be collected.~~ The bureau shall collect the penalty by civil action in the name of the state and ~~paid into~~ shall deposit a penalty collected under this section to the credit of the fund to become a part thereof.

<sup>289</sup> SECTION 3. AMENDMENT. Section 65-04-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty. ~~Any~~ An employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is liable to the state in the amount of two thousand dollars plus ten times the amount of the difference between the premium paid and the amount of premium the employer should have paid. ~~The liability to the state bureau shall collect a penalty imposed under this section must be enforced in a civil action in the name of the state, and all sums the bureau shall deposit a penalty collected under the this section must be paid into to the credit of the fund.~~ Any An employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is guilty of a class A misdemeanor.

SECTION 4. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Bureau to determine premium due from employer - Mailing of pay-in-order as notice of amount due. The bureau shall determine the amount of premium due from every employer subject to ~~the provisions of~~ this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the bureau received information that an employer is subject to the title. The bureau ~~then~~ shall order ~~such~~ the premium to be paid into the fund and shall mail a copy of the pay-in-order ~~must be mailed to such the employer. Such mailing shall constitute Mailing of the pay-in-order constitutes~~ notice to the employer of the amount due.

SECTION 5. AMENDMENT. Section 65-04-23 of the North Dakota Century Code is amended and reenacted as follows:

65-04-23. Penalties for default in payment of premiums, penalties, and interest. ~~Whenever any~~ When an employer defaults in the payment of any premium, ~~or any installment of the premium, any penalty or interest, or in the filing of any bond required under the provisions of this chapter, the employer at the time of default is subject to a penalty of twenty-five not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the obligation premium, penalty, or interest remains unpaid.~~

SECTION 6. AMENDMENT. Section 65-04-24 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>289</sup> Section 65-04-14 was also amended by section 5 of House Bill No. 1190, chapter 616.

65-04-24. Bureau to ~~cause bring suit to be brought~~ for premiums in default. Within twenty days after ~~any such default an employer defaults on payment of premium, penalties, or interest,~~ the bureau shall certify the account in default to the attorney general for the collection of the premium ~~and,~~ accrued penalties ~~and interest, together with the further accruing and any additional penalties; and whenever~~ and interest that may accrue. After an account has been ~~so~~ certified to the attorney general the bureau ~~shall have authority to~~ may adjust or compromise the ~~same account~~ upon recommendation of the attorney general. The bureau ~~may,~~ upon the recommendation and approval of the attorney general, may retain counsel on a contingent fee basis to represent the bureau in any proceeding relating to the collection of amounts due ~~the bureau~~ under this title. ~~All~~ The bureau shall charge attorney fees and costs ~~shall be a charge~~ to the general fund of the workers compensation bureau. In any action for the collection of amounts due the bureau under this title, the court may not review or consider the action of the bureau regarding the acceptance or payment of any claim.

SECTION 7. AMENDMENT. Section 65-04-26.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-26.1. Corporate officer personal liability.

1. Any officer, director, or any employee having twenty percent ownership of a corporation and any manager, governor, or any employee having twenty percent ownership of a limited liability company that is an employer under this title who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums under this title, and who fails to file the reports or to make payments as required An officer or director of a corporation, or manager or governor of a limited liability company, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums or reimbursements under this title and who fails to file the reports or to make payments as required, is personally liable for premiums ~~or~~ under this chapter and reimbursement under section 65-05-07.2, including interest, penalties, and costs ~~in the event if~~ the corporation or limited liability company does not pay to the bureau those amounts for which the employer corporation or limited liability company is liable.
2. The personal liability of any person as provided in this section survives dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation or limited liability company must be considered earned from the any person determined to be personally liable.
3. After notice and opportunity for hearing review of the evidence in the employer's file, the bureau shall make a determination as to the determine personal liability under this section. A hearing must be requested within thirty days from the date of mailing of the notice. The determination is final unless the person found to be personally liable requests review by the bureau within thirty days after mailing of the notice of determination to the person's last known address. The bureau shall provide, by registered mail, notice of liability to a person determined to be personally liable under this section. A person determined to be liable may request reconsideration or rehearing by the

bureau of that determination. The bureau's determination of personal liability is final and is not reviewable in any court unless the person requests reconsideration or rehearing of the determination. The request must be in writing and must be served on the bureau within thirty days from the date of mailing of the notice. Thereafter, hearing must be held pursuant to chapter 28-32.

**SECTION 8. AMENDMENT.** Section 65-04-27 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-27. Payment of claims where employers in default.** The payment of a judgment rendered in an action brought against an employer for the collection of defaulted premiums, or the voluntary payment of the amount of premium, penalties, and costs prior to judgment ~~shall entitle~~ entitles the employer and ~~his~~ that employer's employees to the benefits provided in this title from the date of the ~~pay in order which bills the employer for the premiums. Where the payment. The~~ bureau shall pay an employee who sustains an injury is sustained in an employment when the while working for an employer whose premium is in default the injured employee shall be paid the same as where the employee would receive if the employee were working for an employer whose premium is not in default.

**SECTION 9. AMENDMENT.** Section 65-04-27.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-04-27.1. Injunctive relief - Procedure.**

1. a. To protect the lives, safety, and well-being of wage workers, to ensure fair and equitable contributions to the ~~state workers' compensation insurance fund between among~~ all employers, and to protect the workers' compensation fund, the bureau may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title ~~in any of the following instances:~~
- ~~a-~~ (1) When it has been brought to the attention of the bureau that the employer has unlawfully employed uninsured workers in violation of ~~the provisions of~~ section 65-01-05;
- ~~b-~~ (2) When the employer defaults in the payment of insurance premiums, reimbursements, penalties, or interest into the state fund; or
- ~~c-~~ (3) When the bureau, in exercise of the ~~power and~~ authority granted ~~it~~ by section 65-03-01, ~~giving it full power and jurisdiction over and the supervision of; every employment and every place of employment for the purpose of issuing and enforcing all necessary and proper safety rules and regulations;~~ finds that it is necessary to enjoin and restrain certain employers and employments ~~in order~~ to protect the lives and safety of the employees because of the employer's failure or refusal to comply with necessary and proper safety rules ~~and regulations.~~

- b. The courts of this state ~~are vested with~~ have jurisdiction and power to grant ~~such preventive relief in the instances herein set forth~~ under the circumstances described in subdivision a.
2. ~~The provisions of chapter Chapter 32-06 relating as it relates to~~ injunction shall apply applies to proceedings instituted hereunder insofar as such provisions may be under this section to the extent that chapter is applicable.
3. In addition to ~~the provisions of~~ chapter 32-06, when the court has granted an immediate temporary injunction at the time of the commencement of the action the defendant employer ~~shall be entitled to~~ may have a hearing by the court on the merits of the case without delay ~~and upon.~~ Upon three days' written notice to the bureau the court shall ~~then~~ proceed to hearing on the merits and render its decision.
4. In addition to ~~the provisions of~~ chapter 32-06, when the court has not granted an immediate temporary injunction at the time of the commencement of the action and the time for answer has expired either party ~~shall be entitled to~~ may have a hearing by the court on the merits of the case ~~and upon.~~ Upon ten days' notice by either party to the other the court shall ~~then~~ proceed to hearing on the merits and render its decision.
5. Any court of competent jurisdiction in this state shall impose a fine of at least one thousand dollars against an employer who has violated an injunction granted under this section. The court shall impose a fine for each violation, in addition to any other penalty provided by law.

SECTION 10. AMENDMENT. Section 65-09-01 of the North Dakota Century Code is amended and reenacted as follows:

65-09-01. Liability of uninsured employer for injury to employees  
- Common-law defenses not available.

1. Any employer subject to ~~the provisions of~~ this title who fails to comply with ~~the provisions of~~ chapter 65-04, ~~shall be is~~ is liable to ~~his~~ that ~~employer's~~ employees for damages suffered by reason of injuries sustained in the course of employment, and ~~also shall be is~~ is liable to the ~~personal dependents and legal representatives of such employees where an employee whose death results from such injuries.~~ The employer shall not avail himself in such action of the following common-law defenses:
- 1- The defense of the fellow-servant rule;
- 2- The defense of the assumption of risk; or
- 3- The defense of contributory negligence sustained in the course of employment. The employer ~~shall be is~~ is liable also for the premiums, reimbursements, penalties, and interest provided for in this title.
2. The bureau shall establish a procedure by which a person may apply to the bureau for a determination of whether that person is an employer required to obtain workers' compensation coverage under this title. A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is

notified of the determination. The bureau retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

**SECTION 11. AMENDMENT.** Section 65-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**65-09-02. Application for compensation - Common-law defenses not available - Fund subrogated to recovery - Hearing - Time for filing - Payroll report.** Any An employee whose employer has failed to comply with the provisions of chapter 65-04, who has been injured in the course of his employment, ~~whenever such injury has occurred~~, or his the employee's dependents or legal representatives in case death has ensued, in lieu of proceedings against his employer by civil action in court, may file his an application with the bureau for an award of compensation in accordance with the terms of under this title: ~~And~~ and in addition may maintain a civil action against the employer for damages resulting from the injury or death. In the action, the employer may not assert the common-law defenses of:

1. The fellow servant rule.
2. Assumption of risk.
3. Contributory negligence.

The bureau is subrogated to the recovery made in the action against the uninsured employer. The subrogation interest is determined according to section 65-01-09, with the uninsured employer being the person other than the fund with a legal liability to pay damages with respect to the employee's injury or death. An injured employee, or the dependents of an employee who died as a result of a work-related accident, shall file the original ~~claims~~ claim for compensation ~~shall be filed~~ within one year after the injury or within two years after the death. The bureau shall notify the claimant and the employer that the matter is being processed under this chapter, and thereafter it subsequently shall hear and determine such the application for compensation in like manner as in it would for other claims before the bureau. The employer shall be required to furnish to the bureau all of such employer's payroll records for the preceding six years. A determination by the bureau that a person is not an employer required to obtain workers' compensation coverage under this title is a defense to any claim that the person failed to obtain coverage for the time period during which the determination is effective.

**SECTION 12. AMENDMENT.** Section 65-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**65-09-03. Award - Payroll reports - Notice - Premium - Judgment.** If the information submitted to the bureau is sufficient to substantiate the ~~prayer~~ application of the claimant injured employee, the bureau shall make such awards award compensation to the claimant necessary to comply with the provisions of employee pursuant to this title. Upon acceptance of the claim, the application by an employee for compensation under this chapter, the employer shall furnish the bureau all of that employer's payroll records for the preceding six years. If the employer fails or refuses to provide the records within thirty days of a written request from the bureau, the employer is subject to a penalty not to exceed one hundred dollars for each day until the records are received by the bureau. The bureau shall serve an order upon the employer by certified registered mail which shall state states the amount of premium and penalty due the bureau in accordance with under section 65-09-04, by from the employer. If the employer fails to pay the amount ordered



within thirty days, the bureau shall impose a penalty not to exceed twenty-five percent of the amount ordered and shall collect the same premium, penalties, and interest due by civil action. In ~~such~~ that action, the court may not review or consider the action of the bureau regarding the acceptance or payment of the a claim. No exemptions except absolute exemptions shall be under section 28-22-02 are allowed against any levy under executions pursuant to any a judgment recovered in ~~such~~ the action.

**SECTION 13. AMENDMENT.** Section 65-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**65-09-04. Premiums and penalties to be paid by employer.** Any employer ~~who~~ whose employee was injured and was awarded benefits under section 65-09-03 while that employer was uninsured at the time of the injury of his employee for which the bureau has made an award under section 65-09-03 shall be entitled to the benefits of this title but shall be is liable for any premiums plus penalties and interest due on ~~such~~ those premiums plus a penalty of two hundred not to exceed one thousand dollars and twenty-five percent of all premiums due or paid in the preceding six years. ~~Such~~ The penalties for employers shall be are in lieu of addition to any other penalties provided by law and may be reduced within the absolute discretion of the bureau; ~~provided that; however,~~ the bureau shall may not reduce the amount due from any employer to an amount which is less than the actual cost and reserves of the claim plus the premiums and the penalty on ~~such~~ those premiums.

Approved April 7, 1995

Filed April 7, 1995

**CHAPTER 620****HOUSE BILL NO. 1195**

(Representatives Wald, Dalrymple)

(Senators Mutch, Nething)

**WORKERS' COMPENSATION RETROSPECTIVE  
RATING PILOT PROJECT**

AN ACT to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to establishing a pilot program for retrospective rating for workers' compensation; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

**Retrospective rating pilot program.** The bureau may establish a pilot program to provide retrospective rating to an employer whose annual workers' compensation premium is two hundred fifty thousand dollars or more. The bureau may not require an employer to participate in the program, but it may refuse to allow an employer to participate when it determines that refusal is appropriate. The bureau shall establish formulas, based on sound actuarial principles, for premium calculation under the program. Sections 65-04-01, 65-04-04, and 65-04-04.2 do not apply to retrospective premiums allowed under this section. Any moneys held by the bureau for future claim payments must accrue interest at a reasonable rate as determined by the bureau. The bureau may execute a contract with an employer to establish a retrospective rating plan for that employer. The contract is binding on the employer and the bureau for the term identified in the contract. The term identified in the contract may extend past the end of the biennium in which the contract is executed but the term may not exceed ten years. The bureau may not enter any contract under this section after June 30, 1999. The bureau shall determine the amount of the deposit premium to be paid by an employer participating in the program. The amount of the deposit premium must be based on current rates, payroll, and experience rate factors. The bureau shall establish the maximum premium liability of a participating employer. The maximum premium is not subject to the limitations of section 65-04-17. The bureau may provide refunds from the workers' compensation fund when it is determined appropriate under the retrospective rating formula established. The bureau shall provide any refund due within thirty days after the date of the retrospective premium valuation. The bureau may impose a penalty if an employer fails to pay additional premium due within thirty days after the retrospective premium valuation. The bureau may require an employer to provide a bond, letter of credit, or other security approved by the bureau to guarantee payment of future employer obligations incurred by a retrospective rating plan. The bureau may charge an employer participating in the program a nonrefundable surcharge for the purpose of assisting retirement of any unfunded liability of the fund.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 1996.

Approved March 21, 1995

Filed March 21, 1995

## CHAPTER 621

## HOUSE BILL NO. 1207

(Representatives Wald, Skarphol, Kelsch, Dobrinski)  
(Senators Andrist, Robinson)

## WORKERS' COMPENSATION PREMIUM INTEREST

AN ACT to amend and reenact section 65-04-20 of the North Dakota Century Code, relating to the installment payment of premiums for workers' compensation.

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

SECTION 1. AMENDMENT. Section 65-04-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-20. Installment payment of premiums - ~~Bond~~ Interest required.

1. If the amount of premium billed to an employer on a pay-in-order is ~~in excess of greater than~~ one hundred dollars, ~~such the employer may pay the premium may be paid~~ in installments as follows:
  - 1- a. If the employer is the state of North Dakota, or any department, industrial association, or political subdivision ~~thereof of the state, such the employer may pay the premium may be paid~~ in two equal semiannual installments at the option of the ~~state, department, industrial association, or political subdivision,~~ employer and no bond or undertaking ~~shall be~~ is required to secure the payment of deferred premiums.
  - 2- b. If the employer is other than one mentioned in ~~subsection 1~~ subdivision a, ~~such the employer may pay the premium may be paid; at the option of the employer, either~~ in two equal semiannual installments or in four equal quarterly installments.
2. Interest must be charged at the ~~same rate per annum as earned by the investment of the fund based on the investment measurement review as of March thirty-first of each year and effective July first of each year and the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent. The interest charged may not be less than must be at least~~ six percent per annum. ~~Such rate Interest must be charged on all premiums deferred under the provisions of this section; and upon. Upon~~ default in payment of any installment ~~such installment shall carry, the penalties as provided in this chapter apply.~~

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 622****HOUSE BILL NO. 1206**

(Representatives Wald, Skarphol, Carlson, Dobrinski)  
(Senators Andrist, Kinnoin)

**WORKERS' COMPENSATION EMPLOYEE INJURY  
NOTICE REQUIREMENT**

AN ACT to create and enact four new sections to chapter 65-05 of the North Dakota Century Code, relating to an employee's first report of injury to an employer.

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

**SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Notice to employer.** When an employee is involved in an accident while on the job, the employee shall take steps immediately to notify the employer that the accident occurred and what is the general nature of the injury to the employee, if apparent. Notice may be either oral or written. The notice must be given to the employee's immediate supervisor or another supervisor authorized to receive notice. Absent good cause, notice may not be given later than seven days after the accident occurred or the general nature of the employee's injury became apparent.

**SECTION 2.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Failure to comply with notice and filing provisions.** If an employee fails to notify the employer of an accident and the general nature of the employee's injury, the bureau may consider that failure to notify in determining whether the employee's injury is compensable.

**SECTION 3.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Employer to file first report of notice of injury.** The employer shall file a first report of notice of injury with the bureau within seven days from the date the employer receives the notice of injury from the employee. Failure of the employer to file a first report of notice of injury is an admission by the employer that the alleged injury may be compensable. The bureau may make or reopen a determination made without an employer's first report of notice of injury on its own motion pursuant to section 65-05-04 on the grounds determined by the bureau to be sufficient.

**SECTION 4.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Bureau to notify employee of receipt of employer's first report of notice of injury.** If a claim for compensation has not been received by the bureau but the bureau has received an employer's first report of notice of injury, the bureau shall notify the employee that the employer's first report has been received and shall advise the employee of the claim filing requirements of section 65-05-01.

Approved March 21, 1995

Filed March 21, 1995

**CHAPTER 623****HOUSE BILL NO. 1228**

(Representatives Wald, Skarphol, Carlson)  
(Senators Andrist, Kinnoin, Krebsbach)

**TERMINATION OF WORKERS' COMPENSATION  
BENEFITS UPON RETIREMENT**

AN ACT to amend and reenact section 65-05-09.3 of the North Dakota Century Code, relating to termination of workers' compensation benefits upon retirement.

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

**SECTION 1. AMENDMENT.** Section 65-05-09.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05-09.3. Retirement presumption - Termination of benefits upon retirement.**

1. An employee who has retired or voluntarily withdrawn from the labor force and who is not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the bureau is presumed retired from the labor market ~~and is ineligible for receipt of disability benefits under this title.~~ The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement ~~that the worker:~~
1. Is actively seeking employment;
2. Is available for gainful employment;
3. Has not rejected any job offer made by a former employer, or other bona fide job offer by another employer; and
4. Has not provided the employer, upon written request, with written notice of a scheduled retirement date.

The presumption does not apply to any employee who is permanently and totally disabled as defined under this title.

2. An injured employee who is receiving permanent total, temporary total, or temporary partial disability benefits, or rehabilitation benefits, and who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who is at least sixty-five years old and is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, is considered to be retired. The bureau may not pay any permanent total, temporary total, or temporary partial disability benefits, rehabilitation benefits, or supplemental benefits to an employee who is considered retired; however, the bureau is liable for payment of

medical benefits and permanent partial impairment benefits. An employee who is determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 is not subject to this section.

3. The bureau retains liability for disability benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security, who is gainfully employed, and who suffers an injury arising out of and in the course of that employment.
4. This section applies to all persons who retire or become eligible for social security retirement benefits or other retirement benefits in lieu of social security retirement benefits after July 31, 1995.

Approved April 4, 1995  
Filed April 4, 1995

**CHAPTER 624****SENATE BILL NO. 2202**

(Industry, Business and Labor Committee)  
(At the request of the Workers Compensation Bureau)

**PERMANENT IMPAIRMENT UNDER WORKERS'  
COMPENSATION**

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation permanent impairment; to repeal sections 65-05-12, 65-05-12.1, 65-05-13, and 65-05-14 of the North Dakota Century Code, relating to permanent impairment disputes and scheduled injuries; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Permanent impairment - Compensation - Time paid.** When a compensable injury results in permanent loss of, or loss of use of, a member of the body, the bureau shall determine a permanent impairment award on the following terms:

1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the bureau is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the bureau under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the bureau. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The bureau shall adopt rules implementing any necessary procedures for award payments made under this subsection.
2. If a compensable injury that occurs after July 31, 1995, causes permanent impairment, the bureau shall calculate the amount of the lump sum payable under subsection 1 by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar on the date of the original injury, by the number of weeks specified in subsection 15. The bureau shall pay permanent impairment benefits under subsection 1 at the rate of one hundred twenty-two dollars per week for a compensable injury that occurred before August 1, 1995.
3. The bureau shall notify the employee by certified mail, to the last known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the bureau has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request



within the one hundred eighty day period precludes an award under this section.

4. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and that were caused by the compensable injury. The bureau may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions made symptomatic by the compensable work injury.
5. An injured employee is not eligible for an evaluation for permanent impairment until the employee is at maximum medical improvement. The injured employee's doctor shall report to the bureau the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. A doctor making an evaluation for permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned.
6. Unless otherwise provided by this section, a doctor evaluating the impairment of an injured employee shall use the edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" in effect on the date of the employee's evaluation to establish a rating for impairment of function. A doctor evaluating the impairment of an injured employee resulting from a mental disorder shall use the edition of the American psychiatric association's "Diagnostic and Statistical Manual of Mental Disorders" in effect on the date of the employee's evaluation to establish a rating for the impairment.
7. The bureau shall deduct, from a subsequent award for impairment, any previous award given or calculated on an earlier claim or the same claim for that same member or body part.
8. A rating for impairment of function from an injury to the spinal cord resulting in paraplegia, hemiplegia, or quadriplegia must be calculated based solely on the percentage the impairment of function bears to total impairment of function of the whole body.
9. A rating for impairment of function of the cervical, thoracic, lumbar, or sacral spine must be calculated according to the doctor's diagnosis of the employee's injury or condition that is directly related to the compensable work injury. The rating may not include a rating for other factors, including loss of range of motion, pain, loss of strength, loss of sensation, and radiculopathy unless established by unequivocal electrodiagnostic evidence of nerve root compromise.
10. A rating of impairment of function resulting from injuries other than amputations, injuries to the cervical, thoracic, lumbar, or sacral spine, and injuries to the spinal cord resulting in paraplegia, hemiplegia, or quadriplegia must be based on a diagnosis directly related to the compensable work injury, if the American medical association's "Guides to the Evaluation of Permanent Impairment" provide for an impairment on a diagnostic basis.

11. A rating for impairment of function for loss of strength and sensation must be based on objective medical evidence of nerve damage.
12. A rating of impairment of function due to loss of range of motion must be based on objective medical evidence of structural damage to a joint or loss of motor function.
13. An injured employee is not entitled to a permanent impairment award due solely to pain.
14. If an employee dies, the right to any compensation payable under this section, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment that are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
15. If the injury causes permanent impairment, the percentage the impairment bears to total impairment must be determined in accordance with the first applicable whole body impairment schedule:

For one to fifteen percent impairment	0 weeks
For sixteen percent impairment	5 weeks
For seventeen percent impairment	5 weeks
For eighteen percent impairment	10 weeks
For nineteen percent impairment	10 weeks
For twenty percent impairment	15 weeks
For twenty-one percent impairment	15 weeks
For twenty-two percent impairment	20 weeks
For twenty-three percent impairment	20 weeks
For twenty-four percent impairment	20 weeks
For twenty-five percent impairment	25 weeks
For twenty-six percent impairment	30 weeks
For twenty-seven percent impairment	35 weeks
For twenty-eight percent impairment	40 weeks
For twenty-nine percent impairment	45 weeks
For a thirty percent impairment	50 weeks
For thirty-one percent impairment	60 weeks
For thirty-two percent impairment	70 weeks
For thirty-three percent impairment	80 weeks
For thirty-four percent impairment	90 weeks
For thirty-five percent impairment	100 weeks
For thirty-six percent impairment	110 weeks
For thirty-seven percent impairment	120 weeks
For thirty-eight percent impairment	130 weeks
For thirty-nine percent impairment	140 weeks
For a forty percent impairment	150 weeks
For forty-one percent impairment	160 weeks
For forty-two percent impairment	170 weeks
For forty-three percent impairment	180 weeks
For forty-four percent impairment	190 weeks

For forty-five percent impairment	200 weeks
For forty-six percent impairment	210 weeks
For forty-seven percent impairment	220 weeks
For forty-eight percent impairment	230 weeks
For forty-nine percent impairment	240 weeks
For a fifty percent impairment	250 weeks
For fifty-one percent impairment	265 weeks
For fifty-two percent impairment	280 weeks
For fifty-three percent impairment	295 weeks
For fifty-four percent impairment	310 weeks
For fifty-five percent impairment	325 weeks
For fifty-six percent impairment	340 weeks
For fifty-seven percent impairment	355 weeks
For fifty-eight percent impairment	370 weeks
For fifty-nine percent impairment	385 weeks
For a sixty percent impairment	400 weeks
For sixty-one percent impairment	415 weeks
For sixty-two percent impairment	430 weeks
For sixty-three percent impairment	445 weeks
For sixty-four percent impairment	460 weeks
For sixty-five percent impairment	475 weeks
For sixty-six percent impairment	490 weeks
For sixty-seven percent impairment	505 weeks
For sixty-eight percent impairment	520 weeks
For sixty-nine percent impairment	535 weeks
For a seventy percent impairment	550 weeks
For seventy-one percent impairment	565 weeks
For seventy-two percent impairment	580 weeks
For seventy-three percent impairment	595 weeks
For seventy-four percent impairment	610 weeks
For seventy-five percent impairment	625 weeks
For seventy-six percent impairment	640 weeks
For seventy-seven percent impairment	655 weeks
For seventy-eight percent impairment	670 weeks
For seventy-nine percent impairment	685 weeks
For a eighty percent impairment	700 weeks
For eighty-one percent impairment	715 weeks
For eighty-two percent impairment	730 weeks
For eighty-three percent impairment	745 weeks
For eighty-four percent impairment	760 weeks
For eighty-five percent impairment	775 weeks
For eighty-six percent impairment	790 weeks
For eighty-seven percent impairment	805 weeks
For eighty-eight percent impairment	820 weeks
For eighty-nine percent impairment	835 weeks
For ninety to one hundred percent impairment	1000 weeks

16. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined by the American medical association's "Guides to the Evaluation of Permanent Impairment" to result in a whole body impairment of less than sixteen percent is payable as a sixteen percent impairment.
17. If the percentage of an injured employee's permanent impairment is disputed, all medical evidence must be submitted to an independent

doctor who has not treated the employee and who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish a comprehensive list of doctors who are medical specialists within the state. The bureau shall define, by rule, the process by which the bureau and the injured employee choose an independent doctor to review a disputed permanent impairment rating. The decision of the independent doctor chosen under this process is presumptive evidence of the degree of permanent impairment of the employee. This subsection does not impose liability on the bureau for an impairment award for a rating of impairment for a body part or condition the bureau has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor if the employee disputes the findings of the independent doctor.

18. The bureau shall establish, by rule, a reasonable hourly rate and a maximum fee to compensate an employee's attorney for legal services rendered as a result of the award or denial of compensation for permanent impairment. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
19. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

**SECTION 2. REPEAL.** Sections 65-05-12, 65-05-12.1, 65-05-13, and 65-05-14 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 3. EFFECTIVE DATE.** This Act is effective on August 1, 1995, for all permanent impairment awards determined after July 31, 1995, irrespective of injury date.

Approved April 6, 1995  
Filed April 6, 1995

## **CHAPTER 625**

### **SENATE BILL NO. 2501**

(Senators Andrist, Sand, Solberg)

## **AGGRAVATION OF INJURY FOR WORKERS' COMPENSATION**

AN ACT to create and enact a new subsection to section 65-05-28 of the North Dakota Century Code, relating to aggravation of a work-related injury for purposes of determining workers' compensation benefits.

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

**SECTION 1.** A new subsection to section 65-05-28 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

If an employee undertakes activities, whether or not in the course of employment, which exceed the treatment recommendations of the employee's doctor regarding the work injury, and the doctor determines that the employee's injury or condition has been aggravated or has worsened as a result of the employee's activities, the bureau may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer. An employer's account may not be charged with the expenses of an aggravation or worsening of a work-related injury or condition unless the employer knowingly required the employee to perform activities that exceed the treatment recommendations of the employee's doctor.

Approved March 27, 1995

Filed March 28, 1995

**CHAPTER 626****HOUSE BILL NO. 1221**

(Representatives Wald, Carlson, Delzer, Froseth)  
(Senators Kinnoin, Tennefos)

**WORKERS' COMPENSATION PREFERRED PROVIDERS**

AN ACT to allow an employer covered under the workers' compensation act to require the use of preferred providers.

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

**SECTION 1. Employer to select preferred provider.** Notwithstanding section 65-05-28, an employer subject to this title who maintains an approved risk management program pursuant to section 65-04-19.1 may select a preferred provider to render medical treatment to employees who sustain compensable injuries. "Preferred provider" means a designated provider or group of providers of medical services, including consultations or referral by the provider or providers.

**SECTION 2. Preferred provider - Use required - Exceptions - Notice.**

1. During the first sixty days after a compensable injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the bureau may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a compensable injury.
2. An employee of an employer who has selected a preferred provider may elect to be treated by a different provider provided the employee makes the election and notifies the employer in writing prior to the occurrence of an injury.
3. After sixty days have passed following the injury, the employee may make a written request to the bureau to change providers. The employee shall make the request and serve it on the employer and the bureau at least thirty days prior to treatment by the provider. The employee shall state the reasons for the request and the employee's choice of provider.
4. If the employer objects to the provider selected by the employee under subsection 2 or 3, the employer may file an objection to the change of provider. The employer shall detail in the objection the grounds for the objection and shall serve the objection on the employee and the bureau within five days of service of the request. The employee may serve, within five days of service of the employer's objection, a written response on the employer and the bureau in support of the request for change of

provider. Within fifteen days after receipt of the response or of the expiration of the time for filing the response, the bureau shall rule on the request. Failure of the bureau to rule constitutes approval of the request. Treatment by the employee's chosen provider is not compensable until the bureau approves the request. The preferred provider remains the treating provider until the bureau approves the employee's request to change providers.

5. An employer shall give written notice to its employees when the employer makes an initial selection of a preferred provider or changes the selection of the preferred provider. An employer shall give written notice identifying the selected preferred provider to every employee hired after the selection was made. An employer who has selected a preferred provider shall display notice of the preferred provider in a conspicuous manner at fixed worksites, and wherever feasible at mobile worksites, and in a sufficient number of places to reasonably inform employees of the preferred provider and of the requirements of this section. Failure to give written notice or to properly post notice as required under this subsection invalidates the selection, allowing the employee to make the initial selection of a medical provider.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 627****HOUSE BILL NO. 1227**  
(Representatives Wald, Nichols, Keiser)  
(Senators Mutch, Lee, Watne)**CLAIM CLOSED PRESUMPTION UNDER WORKERS'  
COMPENSATION**

AN ACT to amend and reenact section 65-05-35 of the North Dakota Century Code, relating to the presumption that a workers' compensation claim is closed.

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

**SECTION 1. AMENDMENT.** Section 65-05-35 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05-35. ~~Inactive~~ Closed claim - Presumption.**

1. A claim for benefits under this title is presumed ~~inactive~~ closed if:
  - a. ~~A doctor's report has been filed indicating the employee has reached maximum medical recovery; and~~
  - b. ~~The~~ the bureau has not paid any benefit or received a demand for payment of any benefit for a period of four years.
2. A claim that is presumed ~~inactive~~ closed may not be reopened for payment of any further benefits unless the presumption is rebutted by ~~a preponderance of the clear and convincing evidence. At a minimum, the employee shall present expert medical opinion that there is a causal relationship between the work injury and is the sole cause of the current symptoms.~~
3. With respect to a claim that has been presumed ~~inactive~~ closed, the employee shall provide the bureau written notice of reapplication for benefits under that claim. In case of award of lost-time benefits, the award may commence no more than thirty days before the date of reapplication. In case of award of medical benefits, the award may be for medical services incurred no more than thirty days before the date of reapplication.
4. This section applies to all claims for injury, irrespective of injury date.

Approved March 31, 1995

Filed March 31, 1995



## CHAPTER 628

## HOUSE BILL NO. 1253

(Representatives Wald, Tollefson, Carlson, Kelsch)  
(Senators Andrist, Kinnoin)

REHABILITATION UNDER WORKERS'  
COMPENSATION

AN ACT to amend and reenact sections 54-03-25, 65-05.1-01, 65-05.1-04, and subdivision b of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code, relating to actuarial impact statements for workers' compensation measures, rehabilitation services for injured employees, an injured employee's responsibilities for rehabilitation of a work-related injury, and the twenty-five percent additional rehabilitation allowance given to injured workers.

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

<sup>290</sup> SECTION 1. AMENDMENT. Section 54-03-25 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-03-25. Introduction of bills** Bills and amendments affecting workers' compensation fund - Actuarial impact statement. Beginning December 1, 1992, a ~~The workers compensation bureau shall review any legislative measure affecting workers' compensation benefits or premium rates may not be prefiled for introduction or introduced in either house of the legislative assembly unless job service North Dakota has reviewed the measure and has determined to determine~~ whether the measure will have an actuarial impact on the workers' compensation fund. ~~If the job service North Dakota bureau determines that the measure will have an actuarial impact on the fund, the measure may not be prefiled or introduced unless accompanied by the bureau shall submit, before the measure is acted upon,~~ an actuarial impact statement prepared, at the expense of the ~~job service North Dakota bureau~~, by the actuary employed by the ~~job service North Dakota bureau~~. ~~No~~ The bureau shall review any amendment affecting workers' compensation benefits or premium rates may be attached to any legislative measure unless the amendment is accompanied by and shall submit, before the amendment is acted upon, either a statement prepared by the ~~job service North Dakota bureau~~, stating that the amendment is not expected to have any actuarial impact on the workers' compensation fund, or an actuarial impact statement prepared, at the expense of the ~~job service North Dakota bureau~~, by the actuary employed by the ~~job service North Dakota bureau~~.

SECTION 2. AMENDMENT. Section 65-05.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05.1-01. Rehabilitation services.**

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<sup>290</sup> Section 54-03-25 was also amended by section 39 of Senate Bill No. 2070, chapter 54.

1. The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. ~~It is the~~ The purpose of this chapter ~~to provide for the health and welfare by ensuring to workers' compensation claimants otherwise is to ensure that injured employees~~ covered by this title; receive services, so far as possible, necessary to assist the ~~claimant~~ employee and the ~~claimant's~~ employee's family in the adjustments required by the injury to the end that the ~~claimant may receive~~ employee receives comprehensive rehabilitation services: ~~Such services shall include~~ including medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, ~~medical limitations; age~~ functional capacities, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the employee as soon as practical and as nearly as possible to ninety percent of the employee's average weekly earnings at the time of injury, or to ~~seventy-five sixty-six and two-thirds~~ percent of the average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 ~~of section 65-05.1-04~~ which meets this income test set out above.
4. The first appropriate option among the following, calculated to return the employee to substantial gainful employment, must be chosen for the employee:
  - a. Return to the same position.
  - b. Return to the same occupation, any employer.
  - c. Return to a modified position.
  - d. Return to a modified ~~position~~ or alternative occupation, any employer.
  - ~~e~~ e. Return to ~~a related~~ an occupation in the local job pool which is suited to the employee's education, experience, and marketable skills.
  - ~~f~~ f. Return to ~~a related~~ an occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
  - ~~e~~ g. On-the-job training.
  - ~~f~~ h. Short-term retraining of fifty-two weeks or less.

- ~~9~~ i. Long-term retraining of one hundred four weeks or less.
- ~~4~~ j. Self-employment.
5. If an option listed in subdivision a, b, c, d, e, f, or g of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the doctor to return to part-time employment with the reasonable expectation of attaining full-time employment, the bureau shall pay temporary partial disability benefits under section 65-05-10 until the doctor determines the employee is medically capable of full-time employment.
6. a. If the vocational consultant concludes that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and will not return the employee to the lesser of ~~seventy-five~~ sixty-six and two-thirds percent of the average weekly wage, or ninety percent of the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:
- ~~a~~ (1) That meets the employee's ~~medical limitations~~ functional capacities;
- ~~b~~ (2) ~~In~~ For which the employee meets the qualifications to compete; and
- ~~c~~ (3) Which That will reasonably result in retained earnings capacity equivalent to the lesser of ninety percent of the employee's preinjury earnings or fifty percent of the average weekly wage in the state the state's current hourly minimum wage on the date the rehabilitation consultant's report is issued. If an employee is initially released to part-time employment by the doctor, the income test defined under this paragraph must be waived provided there is a reasonable expectation that the employee will return to full-time employment meeting the income test previously defined under this paragraph.
- b. ~~An~~ Under section 65-05-10, the bureau shall award of partial disability due to based on retained earnings capacity calculated under this section must be made pursuant to section 65-05-10.
- ~~6~~ 7. By agreement between the bureau and the employee, the The income test in subsection 3 and the priority options in subsection 4 may must be waived when an employer offers the employee a return to work option at a wage lower than the income test as defined under subsection 3 or when the bureau and the employee agree to waive the income test and the priority options.
- ~~7~~ 8. Vocational rehabilitation services may be initiated by:
- a. The bureau on its own motion; or
- b. The employee or the employer if proof exists:

- (1) That the ~~claimant~~ employee has reached maximum medical recovery;
- (2) That the ~~claimant~~ employee is not working and ~~has~~ is not voluntarily retired or removed ~~himself~~ from the labor force; and
- (3) That the employee has made good faith efforts to seek, obtain, and retain employment.

~~8- 9.~~ 9. The ~~provisions of chapter~~ Chapter 50-06.1 ~~do~~ does not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.

**SECTION 3. AMENDMENT.** Section 65-05.1-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05.1-04. Injured employee responsibility.**

1. The injured employee shall seek, obtain, and retain reasonable and substantial employment ~~in order~~ to reduce the period of temporary disability to a minimum. The employee has the burden ~~to establish~~ of establishing that the employee has met this responsibility.
2. If the injured employee is unable to obtain substantial employment as a direct result of injury, the employee shall promptly notify the bureau under subdivision b of subsection 7 of section 65-05.1-01.
3. The injured employee shall be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary. The injured employee also shall participate in remedial or other educational services when those services are determined to be necessary by the bureau or the vocational consultant. If the employee is noncompliant with this subsection, the bureau shall suspend benefits during the period of noncompliance.
4. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same ~~or~~, modified ~~position~~, or alternative occupation, or return to ~~related an~~ related an occupation that is suited to the employee's education, experience, and marketable skills, or on-the-job training, the employee is responsible to make a good faith work trial or work search. If the employee fails to perform a good faith work trial or work search, the finding of nondisability or partial disability is res judicata, and the bureau may not reinstate temporary total disability benefits or recalculate an award of partial disability benefits in the absence of a significant change in medical condition attributable to the work injury. ~~However, the~~ The bureau shall recalculate the partial disability award, ~~however~~, if the employee returns, in good faith, to gainful employment. If the employee meets the burden of proving that the employee made a good faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the bureau shall reevaluate the employee's vocational rehabilitation claim. A good faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall

show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee.

5. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is short-term or long-term training, the employee shall cooperate with the necessary testing to determine whether the proposed training program meets the employee's medical limitations and aptitudes. The employee shall attend a qualified rehabilitation training program when ordered by the bureau. A qualified training program is a rehabilitation plan that meets the criteria of this title, ~~which is the approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 6 of section 65-05.1-01,~~ and commences within a reasonable period of time such as the next quarter or semester. The bureau and the employee, by agreement, may waive the income test applicable under this subsection.
6. If, without good cause, the injured employee fails to perform a good faith work trial in a return to the same ~~or, modified position, or alternative occupation,~~ or in an on-the-job training program, or fails to make a good faith work search in return to work utilizing the employee's transferable skills, the employee ~~must be deemed to be~~ is in noncompliance with vocational rehabilitation. If, without good cause, the injured employee fails to attend specific vocational testing, remedial, or other vocational services determined necessary by the bureau or the rehabilitation consultant, the employee is in noncompliance with vocational rehabilitation. If, without good cause, the injured employee fails to attend a scheduled medical or vocational assessment, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee ~~must be deemed to be~~ is in noncompliance with vocational rehabilitation. If, without good cause, the employee discontinues a job the employee is performing, or a training program in which the employee is enrolled, the employee ~~must be deemed to be~~ is in noncompliance with vocational rehabilitation. If the employee establishes a pattern of noncooperation as heretofore described, involving two or more incidents of noncooperation at any time the employee is noncompliant without good cause, subsequent efforts by the employee to come into compliance with vocational rehabilitation may are not be deemed considered successful compliance until the employee has successfully returned to the job or training program for a period of sixty days. In all cases of noncompliance by the employee, the bureau, by administrative order, shall discontinue lost-time benefits. If, ~~upon~~ after the bureau order ~~becoming~~ becomes final, the period of noncompliance continues for sixty days, or a second instance of noncompliance occurs without good cause, the bureau has no further jurisdiction in awarding any further temporary total disability, temporary partial disability, permanent total disability, or vocational rehabilitation benefits.

<sup>291</sup> SECTION 4. AMENDMENT. Subdivision b of subsection 2 of section 65-05.1-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. The rehabilitation allowance must include an additional twenty-five percent ~~while~~ when it is necessary for the employee maintains to maintain two ~~domiciles~~ households, when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the bureau by rule.

Approved March 29, 1995  
Filed March 29, 1995

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<sup>291</sup> Section 65-05.1-06.1 was also amended by section 4 of House Bill No. 1208, chapter 614.

# VETOED MEASURES

## CHAPTER 629

### HOUSE BILL NO. 1251

(Representatives Skarphol, Carlson, Froseth)  
(Senator Andrist)

## ADVERTISEMENTS IN WORKERS COMPENSATION BUREAU PUBLICATIONS

AN ACT to amend and reenact section 65-02-09 of the North Dakota Century Code, relating to the inclusion of advertisements in publications of the workers compensation bureau.

### VETO

March 22, 1995

The Honorable Clarence Martin  
Speaker of the House  
State Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1251

Dear Speaker Martin:

I am returning House Bill 1251, and hereby veto the same pursuant to Article V, Section 9 of the North Dakota Constitution.

The intent of the bill is to allow the North Dakota Workers Compensation Bureau to solicit persons to place advertisements in any publication. The bill allows the Bureau to apply any revenues generated from the advertising to the cost of publishing and distributing the information, and any excess revenue from this act shall be placed in the Bureau's fund.

The legislation, however well intentioned, raises some serious questions. Subsequently, I have these major objections:

1. Government should not be, and does not belong, in the advertising business.
2. There is great potential for conflict of interest. A business involved in negotiations over a pending claim with the Bureau might feel pressured to purchase advertising since the outcome of the case is in doubt.
3. This sets a dangerous precedent. Where will the search for advertising dollars stop? If we allow one state agency to solicit advertising, why then shouldn't another state agency, such as the Tax Department, be

allowed to solicit advertising to help defray the costs of printing and distributing the state income tax forms?

4. I believe this legislation sends the wrong message to the business and labor community. The mission of the Bureau is to service the needs of the employees and employers, not to solicit businesses for advertising dollars in an effort to reduce costs. Also, I feel strongly that reports from state agencies should contain facts that only pertain to the department. Allowing advertising compromises this policy.

For these reasons, I cannot concur with House Bill 1251, and regretfully veto the same and return the bill to your chamber.

Sincerely,

Edward T. Schafer  
Governor

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

**SECTION 1. AMENDMENT.** Section 65-02-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-09. General information to public - Biennial report of bureau.** The bureau, from time to time, may publish and distribute among employers and employees general information as to the business transacted by the bureau as in its judgment may be useful. The bureau may solicit persons to place advertisements with any published information. The bureau shall adopt rules governing advertisements placed with published information under this section. The bureau shall apply any revenues generated from the advertising to the cost of publishing and distributing the information. The bureau shall deposit any excess revenues in the fund. The director shall make a biennial report as prescribed by section 54-06-04 to the governor and the office of management and budget. In addition to any requirements established pursuant to section 54-06-04, the report must include:

1. A statement of the number of awards made by it.
2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
3. A detailed statement of the disbursements from the fund.
4. A statement of the conditions of the various funds carried by the bureau.
5. Any other matters which the bureau wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.

Disapproved March 22, 1995  
Filed April 6, 1995



**CHAPTER 630****HOUSE BILL NO. 1180**

(Representatives Belter, Clark)

**LOCAL GAMING PERMITS**

AN ACT to amend and reenact subdivision c of subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to the issuance of local permits by a governing body to conduct raffles, sports pools, or bingo.

**VETO**

March 27, 1995

The Honorable Clarence Martin  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1180

Dear Speaker Martin:

Attached please find House Bill 1180, which I am returning to the House, and hereby veto.

The bill seeks to allow Adult Amateur Athletic teams affiliated with public entities to apply for, and receive a permit to run a raffle. Incidentally, it would allow them also to run sports pools and bingo activity. I believe this to be an expansion of gaming by public entities.

I have, therefore, vetoed the bill and respectfully return the same to the House Chambers.

Sincerely,

Edward T. Schafer  
Governor

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

**SECTION 1. AMENDMENT.** Subdivision c of subsection 1 of section 53-06.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. To obtain a local permit, the nonprofit organization shall apply directly to the governing body of the city in which the site is located where the raffle, sports pool, or bingo activity will be conducted or, if the raffle, sports pool, or bingo activity is conducted at a site located in a county but outside the limits of a city, the organization shall apply to the board of county commissioners. Application for a local permit must be made on forms provided by the attorney general. The governing body may by ordinance or resolution establish a local permit fee not to exceed twenty-five dollars for each local permit. A request for a local permit by an adult amateur athletic team may not be denied because of affiliation with a public or nonpublic entity.

Disapproved March 27, 1995

Filed April 6, 1995

**CHAPTER 631****SENATE BILL NO. 2067**

(Legislative Council)  
(Interim Judiciary Committee)  
(Senators W. Stenehjem, Traynor)  
(Representatives Brown, Coats, Klein)

**TRIBAL-STATE GAMING COMPACTS**

AN ACT to provide for recognition of tribal-state gaming compacts, to create an open records exception for tribal gaming financial information submitted to a state agency, and to provide for approval of amendments to tribal-state gaming compacts.

**VETO**

April 20, 1995

Alvin Jaeger  
Secretary of State  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

RE: Senate Bill 2067

I am filing with your office, Senate Bill 2067, with my objections thereto, having vetoed the same for the following reasons:

1. This bill was a legitimate effort at resolving complex legal issues, involving the Governor's authority to enter into gaming compacts without legislative oversight, and whether the compacts which were required by federal law, can expressly abrogate state open records law.

These issues are not only complex, but are sensitive as well, involving the relationship of the executive and legislative branches of government, and state-tribal relationships. The bill addresses a number of issues, through the Legislature's recognition of the compacts, and by providing for legislative input for any amendment of the compacts. However, it raises serious questions for the tribes, regarding the state's ability to amend the compacts through future legislation, which the tribes consider to be an unauthorized and unilateral amendment to these agreements.

2. The legislature wisely endorsed SCR 4012, which calls for a study of negotiation, amendment, and renewal of the Indian gaming compacts and requires input from the tribal governments in that effort. That effort should provide us with substantial insight and support for any efforts to clarify these issues during the next legislative session.
3. The compacts themselves provide that either party may seek to amend them, by initiating discussions with the other. (The compacts do NOT allow for unilateral amendment.) If negotiations are initiated in the

future, I have assured the legislative leadership to seek legislative input regarding any of those discussions.

4. The bill if signed, would create a substantial risk of litigation over these sensitive and complex issues. I would prefer to resolve these issues by continuing the dialogue that was initiated months ago. I have spoken with each of the tribal chairs, who recognize the need to continue those discussions and have informed them of the state's interest in having all of these issues fully resolved in an open and timely manner. Senator Stenehjem has also agreed to participate in those discussions to seek a satisfactory resolution.
5. Most importantly perhaps, is the potential impact that the bill may have on long-term state and tribal relations. Currently, the state enjoys a sound and cooperative relationship with each of the tribes in North Dakota. That relationship is important for all North Dakotans. That relationship extends beyond gaming issues, and includes issues regarding game and fish, water development, social concerns, transportation and a host of other issues. Each tribe has made substantial investments in reliance upon the compacts signed years ago. Millions of dollars have been committed to the gaming infrastructure within each reservation based upon the express terms of the compacts themselves. If the State can amend those compacts by legislation today, then what would prevent the State from doing so in the future? Signing SB 2067 into law will drive a wedge deep into the relationship that we have successfully fostered and nurtured for years, and will cause serious harm to state-tribal relations.

The issues surrounding this controversy are legitimate. They need resolution. However, a deal is a deal. North Dakota will stand by its agreements, and we will find other solutions to these concerns.

For these reasons, I respectfully veto SB 2067, and forward the same to you, pursuant to Article V, section 9 of the North Dakota Constitution.

Sincerely,

Edward T. Schafer  
Governor

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

**SECTION 1. Devils Lake Sioux Tribe gaming compact.** The legislative assembly recognizes the gaming compact entered into under the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.] between the state and the Devils Lake Sioux Tribe on October 7, 1992, and the parimutuel racing addendum to that compact entered into on April 8, 1993.

**SECTION 2. Three Affiliated Tribes gaming compact.** The legislative assembly recognizes the gaming compact entered into under the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.] between the state and the Three Affiliated Tribes on October 7, 1992, and the parimutuel racing addendum to that compact entered into on April 14, 1993.

**SECTION 3. Standing Rock Sioux gaming compact.** The legislative assembly recognizes the gaming compact entered into under the Indian Gaming

Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.] between the state and the Standing Rock Sioux on August 31, 1992.

**SECTION 4. Turtle Mountain Band of Chippewa gaming compact.** The legislative assembly recognizes the gaming compact entered into under the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.] between the state and the Turtle Mountain Band of Chippewa on October 9, 1992, and the parimutuel racing addendum to that compact entered into on April 8, 1993.

**SECTION 5. Sisseton-Wahpeton Sioux Tribe gaming compact.** The legislative assembly recognizes the gaming compact entered into under the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.] between the state and the Sisseton-Wahpeton Sioux Tribe on December 9, 1992, and the parimutuel racing addendum to that compact entered into on May 5, 1994.

**SECTION 6. Set-aside percentage of tribal gaming proceeds - Disclosure of audit reports.** Any audit report submitted by a tribe to an agency of this state containing information on the use and compliance of the tribe's set-aside percentage of gaming revenue to economic development and social welfare purposes is open to the public, except for specific financial information contained in the audit report. With the consent of the tribe, an agency of this state may open to the public information contained in the audit report which sets forth specific amounts devoted by the tribe to social welfare and economic development purposes.

**SECTION 7. Tribal-state gaming compact - Amendments.** A tribal-state gaming compact executed before the effective date of this Act may not be amended unless the proposed amendment is submitted to the legislative council for approval. If the legislative assembly is in session when the proposal is submitted, the proposal must be submitted to the legislative assembly for approval by concurrent resolution. The legislative council or the legislative assembly must act on the proposal within the time required in the relevant compact. Any proposed amendment to a compact not acted upon by the legislative council or legislative assembly within the time specified in the compact is deemed approved by the legislative council or legislative assembly.

Disapproved April 20, 1995  
Filed April 21, 1995

**CHAPTER 632****SENATE BILL NO. 2013****PUBLIC INSTRUCTION**

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the school for the deaf, the school for the blind, and the state library; to amend and reenact section 15-21-02 and subsection 2 of section 39-04.2-04 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction and to the public transportation fund; to provide for application; to provide legislative intent; to require a performance audit; to provide for a transfer of funds from the abandoned motor vehicle fund and the public transportation fund; to provide an exemption; and to declare an emergency.

**VETO**

April 21, 1995

Alvin Jaeger  
Secretary of State  
State Capitol  
600 East Boulevard, 1st Floor  
Bismarck, ND 58505

RE: Senate Bill 2013

Dear Secretary Jaeger:

Pursuant to Article V, Sections 9 and 10 of the North Dakota Constitution, I am filing Senate Bill 2013 with your office having signed the same, and hereby veto the \$100,000 appropriation for multitype library authority in subdivision 2 of section one.

I asked for \$4,000 for multitype library authority in the executive budget recommendation. The bill appropriates \$100,000 for that purpose and requires the Legislative Council to study the state library, cooperative library ventures and research and information system during the interim. I cannot approve of this expenditure in view of the study, and the unsettled roll of regional libraries in relation to the state library system. I don't believe making large investments in a system that is currently under review is a wise use of taxpayer dollars. In vetoing the appropriation, I am mindful of the financial constraints of libraries in our State. However, I believe that it is more prudent to complete the study of the system, and then make appropriate investments to best serve all of North Dakota's people.

For these reasons, I respectfully veto this expenditure and file SB 2013 with your office.

Sincerely,

Edward T. Schafer  
Governor

Disapproved April 21, 1995  
Filed April 21, 1995

NOTE: For the full text of Senate Bill No. 2013, including the vetoed line item, see chapter 35.

**CHAPTER 633****SENATE BILL NO. 2015****OFFICE OF MANAGEMENT AND BUDGET**

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide a statement of legislative intent relating to state employee compensation adjustments; to provide a statement of legislative intent relating to program-based performance budgeting; to authorize transfer of various special funds to the general fund; to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to state agency participation in the workers compensation bureau risk management program; to amend and reenact sections 54-16-04.2 and 54-27.2-02 of the North Dakota Century Code and section 4 of Senate Bill No. 2029, as approved by the fifty-fourth legislative assembly, relating to emergency commission approval of special funds, the budget stabilization fund, and the use of funds from the veterans' postwar trust fund; to provide directives relating to 911 telephone services; to provide for program reductions if federal programs are terminated or reduced; to require the director of the information services division to receive budget section approval for mainframe computer enhancements; to provide for a risk manager; to provide an expiration date; and to declare an emergency.

VETO

April 21, 1995

Alvin Jaeger  
Secretary of State  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

RE: Senate Bill 2015

Dear Mr. Secretary:

Pursuant to Article V, Sections 9 and 10, of the North Dakota Constitution, I am filing with your office SB 2015 which I have signed, and am vetoing Section 5 of the bill. Section 5 essentially appropriates \$100,000 for legislative committee room renovations from the \$7,069,297 line item appropriation for Facility Management. In effect, section 5 is an appropriation within an appropriation. The \$100,000 is to be used for another legislative hearing room in the capital complex. In vetoing section 5, it is my intent to veto the appropriation of the \$100,000 as well. My reasons for doing so are set forth below.

At present, the capitol has two large rooms for committee hearings, the Brynhild Haugland room and the Pioneer room. Legislative history of section 5 indicates an intent to divide the Pioneer room into two smaller hearing rooms. That would leave only the Brynhild Haugland room for large meetings and hearings within the capitol



building. I am opposed to reducing to one the number of larger hearing rooms available to State government and the citizens of North Dakota. This is more evident, knowing that there are other rooms available to the Legislature in the complex that are not being used for committee work.

In vetoing section 5, I am cognizant of the law as determined by the North Dakota Supreme Court concerning the Governor's line item veto authority in State ex rel. Link v. Olson, 286 NW2d 262 (N.D. 1979). My intention is to fully comply with the law as provided by our State's highest court.

For these reasons, I respectfully veto section 5 of SB 2015, and file the same with your office.

Sincerely,

Edward T. Schafer  
Governor

Disapproved April 21, 1995  
Filed April 21, 1995

NOTE: For the full text of Senate Bill No. 2015, including section 5, see chapter 37.

**CHAPTER 634****SENATE BILL NO. 2017**

(Appropriations Committee)

**ADJUTANT GENERAL AND VETERANS'  
CEMETERY**

AN ACT to provide an appropriation for defraying the expenses of the adjutant general and for operation of the North Dakota veterans' cemetery; to provide for a transfer from the veterans' postwar trust fund; to amend and reenact section 54-45-03 of the North Dakota Century Code, relating to the administration of the civil air patrol by the adjutant general; and to provide an effective date.

**VETO**

April 21, 1995

Alvin Jaeger  
Secretary of State  
State Capitol  
600 East Boulevard, 1st Floor  
Bismarck, ND 58505

RE: Senate Bill 2017

Dear Secretary Jaeger:

Pursuant to Article V, Sections 9 and 10, I am filing Senate Bill 2017 with your office, having signed the same, and having vetoed Section 6 as authorized by the North Dakota Constitution.

Section 6 appropriates \$2,250,000 from the veterans post war trust fund, for use as permanent endowments for operations of the veterans home and cemetery. The appropriation is contingent upon the next executive budget and becomes operative if the 1997-1999 budget recommendation identifies and requests any appropriation from the veterans post-war trust fund. My objections to Section 6 of the bill follow.

I do not approve of making appropriations based upon a future contingency, which is tied to the next executive budget recommendation. I do not plan to make any appropriation request from the veterans post war trust fund in the next budget. However, if I were to do so, a request for any amount would make the \$2,250,000 operative. This contingency then impedes the authority of the executive branch to design its budget for legislative examination. Even though the next executive budget recommendation would not be the final budget, it would operate as the mechanism that would release funds appropriated in Section 6.

Secondly, the veterans post war trust fund was established by law. The income derived from it was to be used "only for programs of benefit and service to veterans." Section 6 is not supported by North Dakotas

veterans. I believe they deserve the State's consideration as we consider the expenditure and commitment of funds in the postwar trust fund that was dedicated to their use and benefit.

For these reasons, I must respectfully veto Section 6 and enclose SB 2017.

Sincerely,

Edward T. Schafer  
Governor

Disapproved April 21, 1995  
Filed April 21, 1995

NOTE: For the full text of Senate Bill No. 2017, including section 6, see chapter 39.

**CHAPTER 635****SENATE BILL NO. 2066**

(Legislative Council)  
(Interim International Trade Committee)  
(Senators G. Nelson, Mushik, Langley)  
(Representative Dorso)

**INTERNATIONAL TRADE COORDINATING COUNCIL**

AN ACT to establish the international trade coordinating council; and to provide an appropriation.

**VETO**

April 21, 1995

Alvin Jaeger  
Secretary of State  
State Capitol  
600 East Boulevard, 1st Floor  
Bismarck, ND 58505

RE: Senate Bill 2066

Dear Secretary Jaeger:

Pursuant to Article V, Section 9, I am filing with your office, Senate Bill 2066, with my objections thereto, having vetoed the same.

The bill would start a new International Trade Council through which the legislature would monitor trade issues.

First, I have sought to streamline North Dakota's government. One of the ways that I have done this is through the merging and elimination of boards and commissions where possible. Creating a new council goes against this trend. International trade includes marketing of North Dakota products, which is already being done by ED&F. In that regard, this council would duplicate those efforts.

Secondly, I agree with the principal of the bill, that the International Trade is a complex area of the law. Currently, however, the State is responding appropriately to those issues. North Dakota receives information and guidance from a variety of sources including: WGA, NGA, NCSL, and NAAG. Agencies, including Legislative Council, within the state are also coordinating their efforts, and sharing information to properly respond to issues and demands relative to international trade and its impact upon North Dakota law and policy.

For these reasons, I respectfully veto SB 2066, and return it to you.

Sincerely,

Edward T. Schafer  
Governor

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

**SECTION 1. International trade coordinating council - Membership.** The international trade coordinating council consists of the lieutenant governor, the attorney general or a designee of the attorney general, the commissioner of agriculture or a designee of the commissioner, the director of the department of economic development and finance or a designee of the director, three members of the senate and three members of the house of representatives appointed by the chairman of the legislative council, and the person appointed by the governor to be the United States trade representative point of contact. The lieutenant governor is chairman.

**SECTION 2. International trade coordinating council - Support services.** The department of economic development and finance may provide support services required to achieve the objectives of the council.

**SECTION 3. International trade coordinating council - Functions.** The international trade coordinating council shall oversee and coordinate policies and activities relating to international affairs of the state. The council shall coordinate efforts to meet requirements and deadlines under international trade treaties. The council shall coordinate the dissemination of information regarding international trade treaties and state requirements, responsibilities, and opportunities under the treaties. The council may make recommendations to the legislative assembly regarding proposed legislation and appropriations. The council may provide information concerning trade promotion to public and private entities.

**SECTION 4. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$46,000, or so much of the sum as may be necessary, for expenses that are incurred by the members of the legislative assembly while carrying out the duties and responsibilities of the international trade coordinating council for the biennium beginning July 1, 1995, and ending June 30, 1997.

Disapproved April 21, 1995  
Filed April 21, 1995

# MEASURE APPROVED OVER GOVERNOR'S VETO

## CHAPTER 636

### HOUSE BILL NO. 1435

(Representatives Kretschmar, Dorso, Martin, Oban)  
(Senators G. Nelson, Wogsland)

## LEGISLATIVE ASSEMBLY RECONVENED SESSIONS

### VETO

April 4, 1995

The Honorable Clarence Martin  
Speaker of the House  
State Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1435

Dear Speaker Martin:

Mr. Speaker:

I am returning HB 1435, which I am vetoing for the reasons set forth below. The bill allows the legislature to reconvene at the call of the legislative council, after adjournment from the traditional session. I am vetoing the legislation for three reasons.

1. I have serious questions of the constitutionality of the bill. Our Constitution provides that the Legislature will meet in December for orientation and organization, and will reconvene not later than January 11th. Article IV, section 7, continues that the "regular session" will not exceed 80 days; that the days need not be consecutive, and that the Legislature may authorize its committees to meet anytime during the interim. But, there is no express authority to reconvene during the biennium. Finally, Article V, section 5, of the Constitution provides that the Governor "shall have power to convene the legislative assembly on extraordinary occasions." Over the course of many decades, this authority has been used by Governors to call for special sessions when they were appropriate. History will show that Governors have been sensitive to the interests and wishes of legislators. I intend to follow suit, and would consider the request of the Legislature to call a special session when the assembly or its members felt it necessary.
2. Secondly, the bill may impinge upon traditional executive branch authority. Our Constitution provides for a carefully balanced separation of powers, where each branch of government is held in check by the

dispersion of power between the other two branches of government. In that division, the Legislature is to establish public policy, and the executive branch is charged with executing those policies. I fully intend to faithfully execute the laws established by the legislature. However, I believe that HB 1435 begins to erode the carefully crafted separation of powers in the North Dakota Constitution, so I will not approve of any legislation for that reason alone.

3. Finally, I believe the bill advances a public policy that does not reflect the wishes of the People, by permitting the extension of a legislative session beyond its traditional time period. The people of North Dakota do not approve of annual legislative sessions, and this bill begins that process. I cannot approve a bill that begins to allow Legislature to hold sessions outside the usual period during which the session has been held for over a hundred years.

For these reasons, I must veto HB 1435, and respectfully return it to the House of Representatives.

Sincerely,

Edward T. Schafer  
Governor

NOTE: The Governor's veto of House Bill No. 1435 was not sustained. For the full text of House Bill No. 1435 as approved, see chapter 494.

# INITIATED MEASURES, APPROVED

## CHAPTER 637

### PUBLICATION OF CITY GOVERNMENT MINUTES

An initiated measure to create a new section of the North Dakota Century Code, relating to the publication of city government minutes, and to repeal section 40-08-12 of the North Dakota Century Code, relating to the publication of city council proceedings.

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1. Publication of city government proceedings - Electorate to decide.** Beginning with the 1996 biennial municipal elections, and every four years thereafter, all cities in North Dakota, regardless of their form of government, must put on the ballot the question of whether the minutes of its governing body shall be published in its official newspaper. If voters approve publication, the governing body shall, within seven days after each of its meetings, give its official newspaper, for publication, the complete minutes, or a complete summary showing the substantive actions taken at the meeting.

Roll call votes must be published, but may be indicated as "unanimous" where appropriate. A list of the individual checks written by the city and approved by the governing body, showing the payee and the amount of each check, must be published. However, employee salary checks need not be published if the governing body elects to publish an annual salary schedule for each employee. When applicable, these minutes may be labeled, as being published subject to the governing body's review and revision. The minutes shall continue to be published until disapproved at a succeeding quadrennial election.

**SECTION 2. REPEAL.** Section 40-08-12 of the North Dakota Century Code, dealing with the publication of city council minutes, is repealed, effective May 1, 1996.

Approved November 8, 1994

141,831 to 73,285

NOTE: This was measure No. 3 on the general election ballot.



# INITIATED MEASURE, DISAPPROVED

## CHAPTER 638

### SAFETY BELT LAW REPEAL

An initiated measure to repeal subsection 9 of section 39-06.1-06, and sections 39-21-41.4 and 39-21-41.5 of the North Dakota Century Code, relating to the required use of safety belts in certain motor vehicles, to secondary enforcement of that law, and to the penalty for violating that law.

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:**

**SECTION 1. REPEAL.** Subsection 9 of Section 39-06.1-06 and sections 39-21-41.4 and 39-21-41.5 of the 1993 Supplement to the North Dakota Century Code are repealed.

Disapproved November 8, 1994

106,203 to 127,553

NOTE: This was measure No. 4 on the general election ballot.

# REFERRED MEASURE, APPROVED

## CHAPTER 639

### SAFETY BELTS

Approval by referendum of Senate Bill No. 2266 of the Fifty-third Legislative Assembly, which made it a violation for a driver to operate a motor vehicle on a highway unless each front seat occupant wears a safety belt. This prohibition does not apply to farm vehicles or implements of husbandry, rural mail carriers when delivering mail, or vehicles designed to carry eleven or more passengers. A violation of the law subjects the driver to a maximum fee of twenty dollars, but the law prohibits issuance of a citation for a violation of the safety belt law unless the officer lawfully stopped the driver for another violation. The law provides that points may not be assessed against a driver's license for violation of the safety belt requirement.

Approved June 14, 1994

67,744 to 62,826

NOTE: This was measure No. 2 on the primary election ballot.

# CONSTITUTIONAL AMENDMENTS APPROVED

## CHAPTER 640

### SENATE CONCURRENT RESOLUTION NO. 4014

(Senators Freborg, Keller, Lips)  
(Representatives Gates, Mahoney, Tollefson)

### COAL TRUST FUND EXPENDITURES

Senate Concurrent Resolution No. 4014, Chapter 662, 1993 Session Laws, proposed by the Fifty-third Legislative Assembly of the State of North Dakota, for the amendment of section 21 of article X of the Constitution of North Dakota, relating to expenditures from the permanent coal trust fund for clean coal demonstration projects.

#### STATEMENT OF INTENT

This amendment provides that funds may be expended from the permanent coal trust fund for clean coal demonstration projects approved by the industrial commission.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 21 of article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1994, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 21 of article X of the Constitution of North Dakota is amended and reenacted as follows:

**Section 21.** Not less than fifteen percent of the tax imposed for severing coal shall be placed into a permanent trust fund in the state treasury to be held in trust and administered by the board of university and school lands, which shall have full authority to invest said trust funds as provided by law, and may loan moneys from the fund to political subdivisions as provided by law. The interest earned on the moneys in said trust fund shall be used first to replace uncollectable loans made from the fund, and the balance shall be credited to the general fund of the state. Up to fifty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for lignite

research, development, and marketing as provided by law. An additional twenty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for clean coal demonstration projects approved by the industrial commission.

Approved June 14, 1994

74,671 to 46,903

NOTE: This was measure No. 1 on the primary election ballot.

## **CHAPTER 641**

### **SENATE CONCURRENT RESOLUTION NO. 4011**

(Senators Yockim, Freborg, Redlin)  
(Representatives Soukup, Tollefson, Kaldor)

### **OIL EXTRACTION TAX REVENUES**

Senate Concurrent Resolution No. 4011, Chapter 663, 1993 Session Laws, proposed by the Fifty-third Legislative Assembly of the State of North Dakota, to create and enact a new section to article X of the Constitution of North Dakota, relating to deposit of certain oil extraction tax revenues in the common schools trust fund and the foundation aid stabilization fund and providing for use of the principal and income of the foundation aid stabilization fund; and to provide an effective date.

#### **STATEMENT OF INTENT**

This measure requires a portion of oil extraction tax revenues to be deposited in the common schools trust fund and an equal portion to be deposited in the foundation aid stabilization fund, with income of the foundation aid stabilization fund to be transferred to the state general fund. Beginning July 1, 1995, the amount of extraction tax revenue deposited in the two funds pursuant to this measure would equal twenty percent of the extraction tax revenue from taxable oil produced in the state.

#### **BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1994, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article X of the Constitution of North Dakota is created and enacted as follows:

Twenty percent of the revenue from oil extraction taxes from taxable oil produced in this state must be allocated as follows:

1. Fifty percent must be deposited in the common schools trust fund.
2. Fifty percent must be deposited in the foundation aid stabilization fund in the state treasury, the interest income of which must be transferred to the state general fund on July first of each year. The principal of the foundation aid stabilization fund may be expended only upon order of the governor, who may direct such a transfer only to offset foundation aid reductions that were made by executive action pursuant to law due to a revenue shortage.

**SECTION 2. EFFECTIVE DATE.** If approved by the electors, this measure is effective for tax revenue from oil and gas produced after June 30, 1995.

Approved November 8, 1994

159,034 to 53,614

NOTE: This was measure No. 1 on the general election ballot.

## CHAPTER 642

## HOUSE CONCURRENT RESOLUTION NO. 3014

(Representatives Poolman, Austin, R. Berg)  
(Senators W. Stenehjem, Nalewaja, DeMers)

## BOARD OF HIGHER EDUCATION

House Concurrent Resolution No. 3014, Chapter 664, 1993 Session Laws, proposed by the Fifty-third Legislative Assembly of the State of North Dakota, for the amendment of subsections 2 and 4 of section 6 of article VIII of the Constitution of North Dakota, relating to the appointment of a student member to the state board of higher education.

## STATEMENT OF INTENT

This amendment provides for the gubernatorial appointment of a student member to the state board of higher education and provides that the new member's term begins on July 1, 1995.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed amendment to subsections 2 and 4 of section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1994, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Subsections 2 and 4 of section 6 of article VIII of the Constitution of North Dakota are amended and reenacted as follows:

2. a. The state board of higher education ~~shall consist~~ consists of ~~seven~~ eight members; ~~all of whom shall be.~~ The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who shall have resided in this state for not less than five years immediately preceding their appointment; to be appointed by the governor, by and with the consent of appointments. These seven appointments are subject to confirmation by the senate; from a list of names selected as hereinafter provided.

~~There shall not be on said~~ The governor shall appoint as the eighth member of the board a full-time resident student in good academic standing at an institution under the jurisdiction of the state board. Except for the student member, no more than one graduate of any one of the institutions institution under the jurisdiction of the state board of higher education may serve on the board at any one time. No Except for the student member, no person employed by any institution under the control of the board shall serve as a member of the board; nor shall any and no employee of any such institution may be eligible for membership on the state board of higher education for a period of two years following the termination of his employment.

On or before the first day of February, 1939, the The governor shall nominate from a list of three names for each position, selected by the unanimous action of the president of the North Dakota educational association, the chief justice of the supreme court, and the superintendent of public instruction, and, with the consent of a majority of the members-elect of the senate, shall appoint from ~~such the list as such to the~~ state board of higher education seven members; ~~whose terms shall commence on the first day of July, 1939, one of which terms shall expire on the thirtieth day of June, 1940, and one on the thirtieth day of June in each of the years 1941, 1942, 1943, 1944, 1945, and 1946.~~ The term of office of members appointed to fill vacancies at the expiration of said terms shall be for seven years, and in the case of vacancies otherwise arising, appointments shall be made only for the balance of the term of the members whose places are to be filled.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate ~~as hereinbefore provided~~, the governor shall again nominate a candidate ~~for such office~~; selected from a new list; ~~prepared in the manner hereinbefore provided; which.~~ The nomination shall be submitted to the senate for confirmation; and ~~said the~~ proceedings shall ~~be continued~~ continue until ~~such appointments have an appointee has~~ been confirmed by the senate; or the session of the legislature ~~shall have~~ has adjourned.
- c. ~~When any~~ If a term expires or a vacancy occurs when the legislature is not in session, the governor may appoint from a list selected as ~~hereinbefore~~ provided, a member who shall serve until the opening of the next session of the legislature, at which time ~~his~~ the appointment ~~shall must~~ be certified to the senate for confirmation; ~~as above provided; and if the appointment be.~~ If the appointee is not confirmed by the thirtieth legislative day of ~~such the~~ session, ~~his the~~ office shall be deemed vacant and the governor shall nominate ~~from a list selected as hereinbefore provided;~~ another candidate for ~~such the~~ office ~~and the.~~ The same proceedings shall be followed as are ~~above~~ set forth; ~~provided further; that when in this section.~~ provided If the legislature ~~shall be~~ is in session at any time within six months prior to the date of the expiration of the term of any member, the governor shall nominate ~~his a~~ successor from a list selected as above set forth, within the first thirty days of ~~such the~~ session; and upon confirmation by the senate ~~such the~~ successor shall take office at the expiration of the ~~incumbent's~~ term of the incumbent. No person who has been nominated and whose nomination the senate has failed to confirm; ~~shall be is~~ eligible for an interim appointment. On or before July first of each year, beginning in 1995, the governor shall appoint a student member from a list of names recommended by the executive board of the North Dakota student association for a term of one year, beginning on July first. A student member may not serve more than two consecutive terms.



4. Each appointive member of the state board of higher education, except the student member, shall receive ~~such~~ compensation ~~as may be determined~~ set by the legislative assembly for the time actually spent devoted to the duties of ~~his~~ the member's office; ~~and, in addition,~~ All members shall receive ~~his~~ necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of ~~his~~ their office.

Approved November 8, 1994

141,831 to 73,285

NOTE: This was measure No. 2 on the general election ballot.

# CONSTITUTIONAL AMENDMENTS, PROPOSED

## CHAPTER 643

### SENATE CONCURRENT RESOLUTION NO. 4013

(Legislative Council)

(Interim Judiciary Committee)

(Senators Redlin, W. Stenehjem, Traynor)

(Representatives Kretschmar, Brown)

### LIEUTENANT GOVERNOR LEGISLATIVE DUTIES ELIMINATED

A concurrent resolution for the amendment of sections 8 and 13 of article IV, section 7 of article V, and section 9 of article XI of the Constitution of North Dakota, relating to election of presiding officers of the legislative assembly, legislative procedures, powers and duties of the lieutenant governor, and impeachment proceedings; and to repeal section 13 of article XI of the Constitution of North Dakota, relating to impeachment proceedings.

#### STATEMENT OF INTENT

This amendment removes the lieutenant governor as presiding officer of the senate and provides that the presiding officer of the senate must be elected from the membership of the senate.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to sections 8 and 13 of article IV, section 7 of article V, section 9 of article XI, and repeal of section 13 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 8 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

**Section 8.** ~~The Each~~ house of ~~representatives~~ shall elect one of its members to act as presiding officer at the beginning of each organizational session.

**SECTION 2. AMENDMENT.** Section 13 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

**Section 13.** Each house shall keep a journal of its proceedings, and a recorded ~~voted~~ vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a

majority of the members elected to each house; ~~and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.~~

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly during its eighty natural meeting days takes effect on August first after its filing with the secretary of state, or if filed on or after August first and before January first of the following year ninety days after its filing, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

**SECTION 3. AMENDMENT.** Section 7 of article V of the Constitution of North Dakota is amended and reenacted as follows:

**Section 7.** The powers and duties of the lieutenant governor shall be ~~to serve as president of the senate; and he may, when the senate is equally divided, vote on procedural matters; and on substantive matters if his vote would be decisive.~~ ~~Additional duties shall be~~ prescribed by the governor. If, during the vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, or die, or from mental or physical disease, or otherwise become incapable of performing the duties of ~~his~~ office, the secretary of state shall act as governor until the vacancy ~~shall be~~ is filled or the disability removed.

**SECTION 4. AMENDMENT.** Section 9 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

**Section 9.** All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. ~~When the governor or lieutenant governor is on trial, the presiding judge of the supreme court shall preside.~~

**SECTION 5. REPEAL.** Section 13 of article XI of the Constitution of North Dakota is repealed.

Filed March 24, 1995

NOTE: This will be measure No. 1 on the 1996 primary election ballot.

## CHAPTER 644

### SENATE CONCURRENT RESOLUTION NO. 4018

(Senator Heinrich)  
(Representative Rydell)

### STATE LAND AND MINERAL INTEREST EXCHANGES

A concurrent resolution for the amendment of section 6 of article IX of the Constitution of North Dakota, relating to exchanges of state land and mineral rights.

#### STATEMENT OF INTENT

This amendment allows for the exchange of land and mineral interests between the board of university and school lands and private owners and Indian tribes and eliminate the requirement that the board of university and school lands reserve mineral rights in all land transfers.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 6 of article IX of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in June 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 6 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

**Section 6.** No original grant school or institutional land shall be sold for less than the fair market value thereof, and in no case for less than ten dollars (\$10.00) per acre, provided that when lands have been sold on contract and the contract has been canceled, such lands may be resold without reappraisal by the board of appraisal. The purchaser shall pay twenty (20) percent of the purchase price at the time the contract is executed; thereafter annual payments shall be made of not less than six (6) percent of the original purchase price. An amount equal to not less than three (3) percent per annum of the unpaid principal shall be credited to interest and the balance shall be applied as payment on principal as credit on purchase price. The purchaser may pay all or any installment or installments not yet due to any interest paying date. If the purchaser so desires, he may pay the entire balance due on his contract with interest to date of payment at any time and he will then be entitled to proper conveyance.

All sales shall be held at the county seat of the county in which the land to be sold is situated, and shall be at public auction and to the highest bidder, and notice of such sale shall be published once each week for a period of three weeks prior to the day of sale in a legal newspaper published nearest the land and in the newspaper designated for the publication of the official proceedings and legal notices within the county in which said land is situated.

No grant or patent for such lands shall issue until payment is made for the same; provided that the land contracted to be sold by the state shall be subject to taxation from the date of the contract. In case the taxes assessed against any of said

lands for any year remain unpaid until the first Monday in October of the following year, the contract of sale for such land shall, if the board of university and school lands so determine, by it, be declared null and void. No contract of sale heretofore made under the provisions of this section of the constitution as then providing shall be affected by this amendment, except prepayment of principal may be made as herein provided.

Any of said lands that may be required for townsite purposes, schoolhouse sites, church sites, cemetery sites, sites for other educational or charitable institutions, public parks, airplane landing fields, fairgrounds, public highways, railroad right of way, or other railroad uses and purposes, reservoirs for the storage of water for irrigation, irrigation canals, and ditches, drainage ditches, or for any of the purposes for which private lands may be taken under the right of eminent domain under the constitution and laws of this state, may be sold under the provisions of this article, and shall be paid for in full at the time of sale, or at any time thereafter as herein provided. Any of ~~said lands and any other~~ lands controlled by the board of university and school lands, including state ~~coal~~ mineral interests, may, with the approval of ~~said~~ the board, be exchanged for lands and ~~coal~~ mineral interests of the United States, the state of North Dakota or any county or municipality thereof ~~as the legislature may provide~~, Indian tribe, or any private individual or entity, and the lands so acquired shall be subject to the trust to which the lands exchanged therefor were subject; ~~and the state shall reserve all mineral and water power rights in land so transferred, except coal mineral interests approved for exchange by the board of university and school lands under this section.~~

When any of said lands have been heretofore or may be hereafter sold on contract, and the purchaser or his heirs or assigns is unable to pay in full for the land purchased within twenty years after the date of purchase and such contract is in default and subject to being declared null and void as by law provided, the board of university and school lands may, after declaring such contract null and void, resell the land described in such contract to such purchaser, his heirs or assigns, for the amount of the unpaid principal, together with interest thereon reckoned to the date of such resale at the rate of not less than three (3%) percent, but in no case shall the resale price be more than the original sale price; such contract of resale shall be upon the terms herein provided, provided this section shall be deemed self-executing insofar as the provisions for resale herein made are concerned.

Filed March 28, 1995

NOTE: This will be measure No. 2 on the 1996 primary election ballot.

## CHAPTER 645

HOUSE CONCURRENT RESOLUTION NO. 3030  
(Representative Maragos)

## COMPACT WITH UNITED STATES

A concurrent resolution to create and enact a new section to article XIII of the Constitution of North Dakota, relating to the compact with the United States; and for the amendment of sections 1 and 2 of article XIII of the Constitution of North Dakota, relating to jurisdiction over certain military reservations.

## STATEMENT OF INTENT

This amendment creates a new section to article XIII of the Constitution of North Dakota to incorporate by reference provisions of the Enabling Act of 1889 and eliminates language made unnecessary by the new section.

## BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article XIII and amendment to sections 1 and 2 of article XIII of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in June 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 1 of article XIII of the Constitution of North Dakota is amended and reenacted as follows:

## Section 1.

- 1- Perfect toleration of religious sentiment ~~shall~~ must be secured, and no inhabitant of this state ~~shall~~ may ever be molested in person or property on account of ~~his or her~~ that person's mode of religious worship.
- 2- The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States; and that said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; provided, however, that the legislative assembly of the state of North Dakota may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by Act of Congress; that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state; that no taxes shall be imposed by this state on lands or property therein, belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed;

any lands owned or held by any Indian who has severed his tribal relations; and has obtained from the United States or from any person; a title thereto; by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any Acts of Congress containing a provision exempting the lands thus granted from taxation; which last mentioned lands shall be exempt from taxation so long; and to such an extent; as is; or may be provided in the Act of Congress granting the same:

3. In order that payment of the debts and liabilities contracted or incurred by and on behalf of the territory of Dakota may be justly and equitably provided for and made; and in pursuance of the requirements of an Act of Congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states; and to make donations of public lands to such states;" the states of North Dakota and South Dakota; by proceedings of a joint commission; duly appointed under said Act; the sessions whereof were held at Bismarek in said state of North Dakota; from July 16, 1889, to July 31, 1889, inclusive; have agreed to the following adjustment of the amounts of the debts and liabilities of the territory of Dakota which shall be assumed and paid by each of the states of North Dakota and South Dakota; respectively; to wit:

This agreement shall take effect and be in force from and after the admission into the union; as one of the United States of America; of either the state of North Dakota or the state of South Dakota:

The words "State of North Dakota" whenever used in this agreement; shall be taken to mean the territory of North Dakota in case the state of South Dakota shall be admitted into the union prior to the admission into the union of the state of North Dakota; and the words "State of South Dakota;" whenever used in this agreement; shall be taken to mean the territory of South Dakota in case the state of North Dakota shall be admitted into the union prior to the admission into the union of the state of South Dakota:

The said state of North Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase; construction; repairs or maintenance of such public institutions; grounds or buildings as are located within the boundaries of North Dakota; and shall pay all warrants issued under and by virtue of that certain Act of the legislative assembly of the territory of Dakota; approved March 8, 1889, entitled "An act to provide for the refunding of outstanding warrants drawn on the capitol building fund."

The said state of South Dakota shall assume and pay all bonds issued for the territory of Dakota to provide funds for the purchase; construction; repairs or maintenance of such public institutions; grounds or buildings as are located within the boundaries of South Dakota:

That is to say: The state of North Dakota shall assume and pay the following bonds and indebtedness; to wit:



Bonds issued on account of the hospital for the insane at Jamestown, North Dakota; the face aggregate of which is \$266,000; also bonds issued on account of the North Dakota university at Grand Forks, North Dakota; the face aggregate of which is \$96,700; also; bonds issued on account of the penitentiary at Bismarck, North Dakota; the face aggregate of which is \$93,600; also; refunding capitol building warrants dated April 1, 1889; \$83,507.46:

And the state of South Dakota shall assume and pay the following bonds and indebtedness; to wit:

Bonds issued on account of the hospital for the insane at Yankton, South Dakota; the face aggregate of which is \$210,000; also; bonds issued on account of the school for deaf mutes; at Sioux Falls, South Dakota; the face aggregate of which is \$51,000; also; bonds issued on account of the university at Vermillion, South Dakota; the face aggregate of which is \$75,000; also; bonds issued on account of the penitentiary at Sioux Falls, South Dakota; the face aggregate of which is \$94,300; also; bonds issued on account of the agricultural college at Brookings, South Dakota; the face aggregate of which is \$97,500; also; bonds issued on account of the normal school at Madison, South Dakota; the face aggregate of which is \$49,400; also; bonds issued on account of the school of mines at Rapid City, South Dakota; the face aggregate of which is \$33,000; also; bonds issued on account of the reform school at Plankinton, South Dakota; the face aggregate of which is \$30,000; also; bonds issued on account of the normal school at Spearfish, South Dakota; the face aggregate of which is \$25,000; also; bonds issued on account of the soldiers' home at Hot Springs, South Dakota; the face aggregate of which is \$45,000.

The states of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred; except those heretofore or hereafter incurred on account of public institutions; grounds or buildings; except as otherwise herein specifically provided:

The state of South Dakota shall pay to the state of North Dakota \$46,500; on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota; and in full of the undivided one-half interest of North Dakota in the territorial library; and in full settlement of unbalanced accounts; and of all claims against the territory; of whatever nature; legal or equitable; arising out of the alleged erroneous or unlawful taxation of Northern Pacific railroad lands; and the payment of said amount shall discharge and exempt the state of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had; which liability would be a liability of the territory of Dakota had such territory remained in existence; and which liability shall grow out of matters connected with any public institutions; grounds or buildings of the territory situated or located within the boundaries of the other state:

A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of

the public institutions; grounds or buildings located within its boundaries on account of the current appropriations since March 9, 1889; and South Dakota shall be charged with all sums paid on account of public institutions; grounds or buildings located within its boundaries on the same account and during the same time. Each state shall be charged with one-half of all other expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed state of North Dakota; shall be credited to the state of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed state of South Dakota shall be credited to the state of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations; since the 8th day of March, 1889; based upon earnings of years prior to 1888; under and by virtue of the Act of the legislative assembly of the territory of Dakota; approved March 7, 1889; and entitled; "An act providing for the levy and collection of taxes upon property of railroad companies in this territory," being chapter 107 of the Session Laws of 1889 (that is; the part of such sums going to the territory); shall be equally divided between the states of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into said treasury under and by virtue of the Act last mentioned; based on the gross earnings of the year 1888; shall be distributed as already provided by law; except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed state of North Dakota; and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed state of South Dakota; each state shall be credited also with all balances of appropriations made by the seventeenth legislative assembly of the territory of Dakota for the account of the public institutions; grounds or buildings situated within its limits remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned; each state shall at the time of such final adjustment of accounts; assume its share of said indebtedness as determined by the amount paid on account of the public institutions; grounds or buildings of such state in excess of the receipts from counties; municipalities; railroad corporations or persons within the limits of said state; as provided in this article; and if there should be a surplus at the time of such final adjustment; each state shall be entitled to the amounts received from counties; municipalities; railroad corporations or persons within its limits over and above the amount charged it.

And the state of North Dakota hereby obligates itself to pay such part of the debts and liabilities of the territory of Dakota as is declared by the foregoing agreement to be its proportion thereof; the same as if such proportion had been originally created by said state of North Dakota as its own debt or liability.

**SECTION 2. AMENDMENT.** Section 2 of article XIII of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina, and Fort

Totten, heretofore declared by the president of the United States; provided, legal process, civil and criminal, of this state, ~~shall extend~~ extends over ~~such~~ those reservations in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of ~~such~~ those reservations. The legislative assembly may provide, upon the terms and conditions it adopts, for the acceptance of any jurisdiction as may be delegated to the state by act of Congress.

SECTION 3. A new section to article XIII of the Constitution of North Dakota is created and enacted as follows:

All other provisions of the Enabling Act of Congress approved on February 22, 1889, 25 United States Statutes at Large 676, chapter 180, and section 1 of this article of the Constitution of North Dakota, as section 1 existed immediately before the adoption of this section, are continued in effect as though fully recited and continue to be irrevocable without the consent of the United States and the people of this state.

Filed April 3, 1995

NOTE: This will be measure No. 3 on the 1996 primary election ballot.

**CHAPTER 646****HOUSE CONCURRENT RESOLUTION NO. 3009**

(Legislative Council)  
(Interim Judiciary Committee)  
(Representatives Brown, Klein)  
(Senator W. Stenehjem)

**EXECUTIVE BRANCH ARTICLE**

A concurrent resolution to create and enact a new article V of the Constitution of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to the powers and duties of the governor, and to gubernatorial succession; to repeal the present article V of the Constitution of North Dakota, relating to the executive branch of government, to the election and qualification of executive officials, to the powers and duties of the governor, and to gubernatorial succession; and to provide an effective date.

**STATEMENT OF INTENT**

This measure creates a new executive branch article for the Constitution of North Dakota that retains all the current elected state officials. The amendment provides for the election and qualification of executive officials, for the powers and duties of the governor, and for gubernatorial succession. The amendment also repeals the present article V of the Constitution of North Dakota and provides that these changes will take effect on July 1, 1997.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed creation of a new article V and the following proposed repeal of the present article V of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The executive power is vested in the governor, who shall reside in the state capital and shall hold the office for the term of four years beginning in the year 2000, and until a successor is elected and qualified.

**SECTION 2.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law.

**SECTION 3.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The governor and the lieutenant governor must be elected on a joint ballot. Each vote cast for a candidate for governor is deemed cast also for the candidate for lieutenant governor running jointly with the candidate for governor. The joint candidates having the highest number of votes must be declared elected. If two or more joint candidates have an equal and highest number of votes for governor and lieutenant governor, the legislative assembly in joint session at its next regular session shall choose one pair of joint candidates for the offices. The returns of the election for governor and lieutenant governor must be made in the manner prescribed by law.

**SECTION 4.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

To be eligible to hold an elective office established by this article, a person must be a qualified elector of this state, must be at least twenty-five years of age on the day of the election, and must have been a resident of this state for the five years preceding election to office. To be eligible to hold the office of governor or lieutenant governor, a person must be at least thirty years old on the day of the election. The attorney general must be licensed to practice law in this state.

**SECTION 5.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office are four years, except that terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office other than for governor and lieutenant governor receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

**SECTION 6.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The elected state officials and the chief executive officers of the principal departments shall hold office in the state capital.

**SECTION 7.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The governor is the chief executive of the state. The governor shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed.

The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and maintain order.

The governor shall prescribe the duties of the lieutenant governor in addition to those prescribed in this article.

The governor may call special sessions of the legislative assembly.

The governor shall present information on the condition of the state, together with any recommended legislation, to every regular and special session of the legislative assembly.

The governor shall transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state.

The governor may grant reprieves, commutations, and pardons. The governor may delegate this power in a manner provided by law.

**SECTION 8.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office that is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes the governor shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate may again be nominated for that office at the same session, nor may the nominee be appointed to that office during a recess or adjournment of the senate.

**SECTION 9.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it becomes law.

The governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.

The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, must immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill becomes law.

While the legislative assembly is in session, a bill becomes law if the governor neither signs nor vetoes it within three legislative days after its delivery to the governor. If the legislative assembly is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Saturdays and Sundays excepted, after its delivery to the governor.

**SECTION 10.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

A governor who asks, receives, or agrees to receive any bribe upon any understanding that the governor's official opinion, judgment, or action shall be influenced thereby, or who gives or offers, or promises the governor's official influence in consideration that any member of the legislative assembly shall give the member's official vote or influence on any particular side of any question or matter upon which the member may be required to act in the member's official capacity, or who menaces any member by the threatened use of the governor's veto power, or who offers or promises any member that the governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give the member's official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly, or who threatens any member that the governor will remove any person or persons from office or position with intent in any manner to influence the action of that member, must be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof forfeits all right to hold or exercise any office of trust or honor in this state.

**SECTION 11.** A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The lieutenant governor shall succeed to the office of governor when a vacancy occurs in the office of governor. If, during a vacancy in the office of governor, the lieutenant governor is unable to serve because of death, impeachment, resignation, failure to qualify, removal from office, or disability, the secretary of state shall act as governor until the vacancy is filled or the disability removed.

**SECTION 12.** If Senate Concurrent Resolution No. 4013 is not approved by the fifty-fourth legislative assembly, or if Senate Concurrent Resolution No. 4013 is approved by the fifty-fourth legislative assembly but is not approved by the qualified electors at the primary election held in 1996, then the following new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The lieutenant governor shall serve as president of the senate. If the senate is equally divided on a question, the lieutenant governor may vote on procedural matters and on substantive matters if the lieutenant governor's vote would be decisive.

**SECTION 13. REPEAL.** The present article V of the Constitution of North Dakota is repealed.

**SECTION 14. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on July 1, 1997.

Filed April 4, 1995

NOTE: This will be measure No. 4 on the 1996 primary election ballot.

**CHAPTER 647****SENATE CONCURRENT RESOLUTION NO. 4023**

(Senators Holmberg, W. Stenehjelm, Traynor)  
(Representative Kretschmar)

**BOARD OF HIGHER EDUCATION MEMBERSHIP**

A concurrent resolution for the amendment of subsection 2 of section 6 of article VIII of the Constitution of North Dakota, relating to the appointment and terms of members of the state board of higher education.

**STATEMENT OF INTENT**

This amendment reduces the term of office for members of the board of higher education from seven to four years and provides that members may not serve more than two terms. The amendment requires that the membership of the board be maintained in a balanced and representative manner, that no more than one person holding a bachelor's degree from a particular institution serve on the board at any one time, and that the president pro tempore of the senate and the speaker of the house be added to the nominating committee for the board of higher education.

**BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the following proposed amendment to subsection 2 of section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Subsection 2 of section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

2. a. The state board of higher education consists of eight members. The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who have resided in this state for not less than five years immediately preceding their appointments. These seven appointments are subject to confirmation by the senate.

The governor shall appoint as the eighth member of the board a full-time resident student in good academic standing at an institution under the jurisdiction of the state board. Except for the student member, no more than one graduate of any person holding a bachelor's degree from a particular institution under the jurisdiction of the state board of higher education may serve on the board at any one time. Except for the student member, no person employed by any institution under the control of the board shall serve as a member of the board and no employee of any such institution may be eligible for membership on the state board of higher education for a period of two years following the termination of employment.

The governor shall nominate from a list of three names for each position, selected by ~~the unanimous~~ action of four of the



following five persons: the president of the North Dakota ~~educational~~ education association, the chief justice of the supreme court, ~~and the superintendent of public instruction, the president pro tempore of the senate, and the speaker of the house of representatives~~ and, with the consent of a majority of the members-elect of the senate, shall appoint from the list to the state board of higher education seven members. The governor shall ensure that the board membership is maintained in a balanced and representative manner. The term of office of members appointed to fill vacancies at the expiration of said terms shall be for ~~seven~~ four years, and in the case of vacancies otherwise arising, appointments shall be made only for the balance of the term of the members whose places are to be filled. A member may not be appointed to serve for more than two terms. If a member is appointed to fill a vacancy and serves two or more years of that term, the member is deemed to have served one full term.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate, the governor shall again nominate a candidate selected from a new list. The nomination shall be submitted to the senate for confirmation and the proceedings shall continue until an appointee has been confirmed by the senate or the session of the legislature has adjourned.
- c. If a term expires or a vacancy occurs when the legislature is not in session, the governor may appoint from a list selected as provided, a member who shall serve until the opening of the next session of the legislature, at which time the appointment must be certified to the senate for confirmation. If the appointee is not confirmed by the thirtieth legislative day of the session, the office shall be deemed vacant and the governor shall nominate another candidate for the office. The same proceedings shall be followed as are set forth in this section. If the legislature is in session at any time within six months prior to the date of the expiration of the term of any member, the governor shall nominate a successor from a list selected as above set forth, within the first thirty days of the session and upon confirmation by the senate the successor shall take office at the expiration of the incumbent's term. No person who has been nominated and whose nomination the senate has failed to confirm is eligible for an interim appointment. On or before July first of each year, beginning in 1995, the governor shall appoint a student member from a list of names recommended by the executive board of the North Dakota student association for a term of one year, beginning on July first. A student member may not serve more than two consecutive terms.

Filed March 28, 1995

NOTE: This will be measure No. 1 on the 1996 general election ballot.

## CHAPTER 648

### SENATE CONCURRENT RESOLUTION NO. 4014

(Legislative Council)  
(Interim Sovereign Immunity Committee)  
(Senators Nething, Redlin, W. Stenehjerm)  
(Representatives Kretschmar, Aarsvold)

### SOVEREIGN IMMUNITY

A concurrent resolution to create and enact a new section to the Constitution of North Dakota, relating to suits against the state and state employees; and to amend and reenact section 9 of article I of the Constitution of North Dakota, relating to suits against the state and state employees.

#### STATEMENT OF INTENT

This measure reinstates the doctrine of sovereign immunity.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed new section and proposed amendment to section 9 of article I of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1996 in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 9 of article I of the Constitution of North Dakota is amended and reenacted as follows:

**Section 9.** All courts ~~shall~~ must be open, and every ~~man~~ person for any injury done ~~him in his~~ to lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial, or delay. ~~Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.~~

**SECTION 2.** A new section to the Constitution of North Dakota is created and enacted as follows:

Notwithstanding any other provision of the constitution, no suit may be brought against the state or an employee of the state acting within the employee's official capacity unless the legislative assembly provides by law the type of claims and the procedure through which those claims may be brought against the state or its employees.

Filed March 28, 1995

NOTE: This will be measure No. 2 on the 1996 general election ballot.

## CHAPTER 649

### HOUSE CONCURRENT RESOLUTION NO. 3010

(Legislative Council)  
(Interim Judiciary Committee)  
(Representatives Brown, Coats, Klein)

### HOUSE MEMBER TERMS

A concurrent resolution for the amendment of sections 3 and 4 of article IV of the Constitution of North Dakota, relating to the term of members of the house of representatives; and to provide an effective date.

#### STATEMENT OF INTENT

These amendments change the term of members of the house of representatives from two years to four years and authorize the legislative assembly to establish a procedure whereby one-half of the members of the house of representatives are elected biennially. The amendments will take effect on July 1, 1997.

#### BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendments to sections 3 and 4 of article IV of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 3 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

**Section 3.** The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate and one-half of the members of the house of representatives, as nearly as is practicable, are elected biennially.

**SECTION 2. AMENDMENT.** Section 4 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

**Section 4.** Senators and representatives must be elected for terms of four years ~~and representatives for terms of two years~~.

**SECTION 3. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on July 1, 1997.

Filed April 3, 1995

NOTE: This will be measure No. 3 on the 1996 general election ballot.

# HOUSE CONCURRENT RESOLUTIONS

## CHAPTER 650

### HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Council)

(Interim Agriculture Committee)

(Representatives Nicholas, Boehm, Belter, Hagle)

(Senator Kelsh)

### WHEAT GRADING CHANGES URGED

A concurrent resolution urging the Federal Grain Inspection Service to disseminate useful information about technological and regulatory changes affecting the grading of wheat and to encourage the use of first official grades at destination ports.

**WHEREAS**, the production and sale of wheat directly impacts the economic well-being of farmers and country elevators, and indirectly impacts rural communities, the state, and the nation;

**WHEREAS**, recent technological advances and regulatory changes have affected the grading of wheat by the country elevators that purchase the wheat from the farmer and by the destination ports that receive the wheat for export; and

**WHEREAS**, inconsistencies between the test results of wheat that is first graded at country elevators and then graded at destination ports result in country elevators being placed at substantial financial risk;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Federal Grain Inspection Service to disseminate useful information about technological and regulatory changes affecting the grading of wheat; and

**BE IT FURTHER RESOLVED**, that the Federal Grain Inspection Service be urged to recognize the effect that inconsistently graded wheat has on farmers and country elevators and therefore encourage the use of contractual provisions requiring acceptance of first official grades as the price and quality determinants at destination ports; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the administrator of the Federal Grain Inspection Service and to each member of the North Dakota Congressional Delegation.

Filed March 31, 1995

**CHAPTER 651****HOUSE CONCURRENT RESOLUTION NO. 3002**

(Legislative Council)

(Interim Budget Committee on Government Services)

(Representatives Martin, Wentz, Kerzman)

(Senators Robinson, B. Stenehjem)

**MENTALLY ILL AND CHEMICALLY DEPENDENT  
SERVICES MONITORING**

A concurrent resolution directing the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent and the changes in the role of the State Hospital and expanded community services, including psychosocial clubs and the clubhouse projects.

**WHEREAS**, the Department of Human Services has developed a plan for an integrated multidisciplinary continuum of service for mentally ill individuals pursuant to North Dakota Century Code Section 50-06-06.5, which was a recommendation resulting from a 1985-86 study by the Legislative Council; and

**WHEREAS**, the Legislative Council has monitored services to the mentally ill and chemically dependent since the 1987-88 interim, including the role and function of the State Hospital and expanded community services for the mentally ill and chemically dependent; and

**WHEREAS**, a survey of regional human service center mental health program needs indicates the Department of Human Service's 1995-97 budget request for community services for the mentally ill may not include sufficient funds to meet all the needs identified by the regional human service centers;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council, with the cooperation and participation of executive branch agencies, monitor the continued development of a continuum of services for the mentally ill and chemically dependent and the changes in the role of the State Hospital and expanded community services, including psychosocial clubs and the clubhouse projects; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 27, 1995

**CHAPTER 652****HOUSE CONCURRENT RESOLUTION NO. 3003**

(Legislative Council)

(Interim Budget Committee on Human Services)

(Representatives Svedjan, Rydell, Kaldor)

(Senators Thane, Mathern, DeMers)

**CHILD SUPPORT COLLECTION SYSTEM STUDY**

A concurrent resolution directing the Legislative Council to study methods to improve the cost effectiveness and efficiency of the Department of Human Services child support collection system and any anticipated impact on the health and welfare of the child and to review the roles of clerks of court, regional child support enforcement units, and the Department of Human Services in providing a coordinated and effective child support enforcement program.

**WHEREAS**, during the 1993-94 interim the Legislative Council's interim Budget Committee on Human Services studied welfare reform, determined that child support enforcement is a significant factor in reducing custodial single parents' dependence on economic assistance, and recommended legislation to enhance the state's child support enforcement efforts; and

**WHEREAS**, clerks of court, regional child support enforcement units, and the Department of Human Services Child Support Enforcement Division have responsibilities in child support collections; and

**WHEREAS**, individuals have expressed concerns over the Department of Human Services Child Support Enforcement Division providing assistance to nonwelfare custodial single parents; and

**WHEREAS**, the Department of Human Services is developing a new computer system to be operational by October 1, 1995, designated as the fully automated child support enforcement system or "FACSES", which will provide additional information regarding the status of child support payment collections and arrearages;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study methods to improve the cost effectiveness and efficiency of the Department of Human Services child support collection system and any anticipated impact on the health and welfare of the child and to review the roles of clerks of court, regional child support enforcement units, and the Department of Human Services in providing a coordinated and effective child support enforcement program; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 3, 1995

**CHAPTER 653****HOUSE CONCURRENT RESOLUTION NO. 3004**

(Legislative Council)

(Interim Court Services Committee)

(Representatives Kretschmar, Mahoney, Soukup)

(Senators W. Stenehjem, Andrist)

**CRIMINAL JUSTICE INFORMATION SYSTEM STUDY**

A concurrent resolution directing the Legislative Council to monitor the development and operation of criminal justice information systems in North Dakota and to study policies and issues relating to the confidentiality, dissemination, and retention of criminal justice information.

**WHEREAS**, criminal justice agencies, courts, and other public and private organizations are developing plans for the collection, sharing, and use of criminal justice information on a consistent statewide basis; and

**WHEREAS**, these efforts can contribute to coordinating the sharing of criminal justice information; development of criminal justice information policy to improve the criminal justice system, to reduce crime, and to protect the citizen's right to privacy; improvement of procedures and practices with respect to criminal justice information; development and implementation of new criminal justice information technologies; and evaluation of information practices and programs of the criminal justice system; and

**WHEREAS**, criminal justice information systems operate within a complex legal environment of state and federal statutes and rules regarding public access and privacy, as well as constitutional rights; and

**WHEREAS**, it is desirable to provide and encourage public access to criminal justice information that does not harm the rights of individuals to be free from improper and unwarranted intrusions into their privacy; and

**WHEREAS**, the development of new information technologies and the current potential for greater, practical public access to criminal justice information warrants a review of issues regarding state and federal statutes and rules that govern the confidentiality, dissemination, and retention of criminal justice information;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council monitor the development and operation of criminal justice information systems in North Dakota and study policies and issues relating to the confidentiality, dissemination, and retention of criminal justice information; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 31, 1995

**CHAPTER 654****HOUSE CONCURRENT RESOLUTION NO. 3005**

(Legislative Council)

(Interim Court Services Committee)

(Representatives Clayburgh, Brown, Mahoney)

(Senators W. Stenehjem, Andrist)

**JUDICIAL SYSTEM UNIFICATION STUDY**

A concurrent resolution directing the Legislative Council to study the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction, with emphasis on a review of venue statutes.

**WHEREAS**, in 1991 the Legislative Assembly provided a transition process for the establishment of a single trial court of general jurisdiction to be effective January 1, 1995; and

**WHEREAS**, implementing a single trial court system and reducing the number of judges will require prudent allocation of judicial resources; and

**WHEREAS**, demographic shifts in the state's population and county-based venue statutes may complicate the manner in which efficient and effective judicial services can be provided; and

**WHEREAS**, the effects of the unification of the state's judicial system into a single trial court of general jurisdiction require continued monitoring;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction, with emphasis on a review of venue statutes; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 31, 1995



**CHAPTER 655****HOUSE CONCURRENT RESOLUTION NO. 3006**

(Legislative Council)  
(Interim Education Finance Committee)  
(Representative Keiser)  
(Senator C. Nelson)

**HIGHER EDUCATION FOR HIGH SCHOOL STUDENTS  
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of utilizing institutions of higher education to provide educational options and opportunities for North Dakota high school students.

**WHEREAS**, it is in the state's interest to ensure that high school students have the highest quality courses and the most diverse educational options and opportunities available to them; and

**WHEREAS**, the provision of courses and educational options and opportunities may be enhanced by using the resources of the state institutions of higher education; and

**WHEREAS**, equitably providing educational options and opportunities to high school students in geographically diverse environments will require the coordination and cooperation of local school officials, state education agencies, the Board for Vocational and Technical Education, and the Board of Higher Education;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of utilizing institutions of higher education to provide educational options and opportunities to North Dakota high school students; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 31, 1995

**CHAPTER 656****HOUSE CONCURRENT RESOLUTION NO. 3008**

(Legislative Council)

(Interim Health and Communications Committee)

(Representatives Svedjan, Monson, Mutzenberger)

(Senators DeMers, Bowman, Mathern)

**HEALTH CARE AND COVERAGE STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing recommendations by the North Dakota Health Task Force for improving the health status of North Dakotans, to monitor the rate of health care cost increases, to review the impact of newly enacted programs to improve the health status of North Dakotans, and to address unmet medical needs in rural areas.

**WHEREAS**, the North Dakota Health Task Force recommended universal health coverage for all North Dakotans be achieved by August 1, 1999; and

**WHEREAS**, the task force recommended that a standard health care benefits plan be developed in conjunction with the plan for universal coverage; and

**WHEREAS**, the task force recommended that a standard health care benefits plan provide coverage for mental illness and chemical addiction equal to the coverage provided for physical illness; and

**WHEREAS**, the task force recommended that health care costs be monitored by comparing the rate of increase in health care costs to the consumer price index; and

**WHEREAS**, the task force recommended that health insurance incentives, community health education programs, a health education curriculum for schools, and a comprehensive health strategy for the state be developed; and

**WHEREAS**, the task force recommended that the availability of rural emergency medical services and the access to primary care in rural areas be increased; and

**WHEREAS**, the University of North Dakota School of Medicine and the rural hospitals have the capability to help address unmet medical needs in rural areas; and

**WHEREAS**, legislative study is necessary to determine the feasibility and desirability of legislation to implement these recommendations; and

**WHEREAS**, health care reform proposals enacted by the Fifty-fourth Legislative Assembly need to be reviewed to determine their effectiveness in improving the health status of North Dakotans;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of implementing recommendations by the North Dakota Health Task Force for improving the health status of North Dakotans, monitor the rate of increase of health care costs, review the impact of newly enacted programs to improve the health status of North Dakotans, and address medical needs in rural areas; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 657****HOUSE CONCURRENT RESOLUTION NO. 3013**

(Representatives Boehm, Clark)

(Senator Tomac)

**FUNDING LOST FROM ABSENCE OF HELMET LAW  
RESTORATION URGED**

A concurrent resolution urging Congress to repeal those sections of a recently passed federal mandate requiring a percentage of federal highway funds be transferred from states that do not enact statutes requiring the use of helmets by motorcyclists.

**WHEREAS**, the Tenth Amendment to the United States Constitution, part of the original Bill of Rights, reads as follows, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people"; and

**WHEREAS**, the limits on Congress' authority to regulate states' activities, prescribed by the Tenth Amendment, have gradually been eroded, and federal mandates to the states that infringe on these protected areas have become almost commonplace; and

**WHEREAS**, the regulation of traffic and motor vehicle safety laws is constitutionally the province of state, not congressional, authority; and

**WHEREAS**, a recently passed federal mandate would require a percentage of federal highway funds be transferred from states that do not enact statutes requiring the use of helmets by motorcyclists; and

**WHEREAS**, while the stated goal of the federal mandate, to reduce highway fatalities and injuries through increased use of motorcycle helmets, is certainly praiseworthy, it is the opinion of the Fifty-fourth Legislative Assembly that the passage of such legislation by the Congress of the United States would be a blatant transgression upon the states' regulatory authority under the Tenth Amendment;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Congress of the United States to repeal those sections of the federal mandate that infringe upon the states' constitutional authority to regulate traffic and motor vehicle safety within their respective boundaries and, specifically, to refrain from mandating the passage of state laws requiring the use of motorcycle helmets or precluding their repeal; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Speaker of the United States House of Representatives, the President Pro Tempore of the United States Senate, and to each member of the North Dakota Congressional Delegation, urging them in the performance of their elected responsibilities to protect and strengthen the position of the states in the federal union, avoid intrusion upon states prerogatives, and afford protection to the proper governing authorities of the states.

Filed April 3, 1995

## CHAPTER 658

## HOUSE CONCURRENT RESOLUTION NO. 3015

(Representatives Rydell, Kunkel, Laughlin, Coats, Kelsch)

(Senator Naaden)

## LEGISLATIVE EMPLOYEE COMPENSATION

A concurrent resolution designating House and Senate employees and fixing their compensation.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That for the Fifty-fourth Legislative Assembly, the following persons are employed and appointed as employees of the House and Senate and are to be paid the daily wages opposite their respective names in accordance with their positions:

## HOUSE

Roy Gilbreath, Chief Clerk	\$95.00
Lance Hagen, Assistant Chief Clerk	80.00
Barbara Middaugh, Desk Reporter	89.00
Jerome Moszer, Sergeant-at-Arms	74.00
David Hougen, Bill Clerk	74.00
Mavis Patchen, Secretary to Majority Leader	80.00
Mary Kelly, Staff Assistant to Majority Leader	74.00
Jeff Peterson, Staff Assistant to Majority Leader	74.00
Pamela Bergman, Secretary to Minority Leader	80.00
April Fairfield, Staff Assistant to Minority Leader	74.00
Scott Immel, Staff Assistant to Minority Leader	74.00
Lorrie Giese, Secretary to Speaker	74.00
Laurie Kaelberer, Chief Committee Clerk	78.00
Carol Nitschke, Appropriations Committee Clerk	78.00
Verna Kohls, Assistant Appropriations Committee Clerk	74.00
Betty Owen, Assistant Appropriations Committee Clerk	74.00
Pamela Geiger, Assistant Appropriations Committee Clerk	74.00
Janice Stein, Committee Clerk	74.00
Lavata Becker, Committee Clerk	74.00
Kathy Mayer, Committee Clerk	74.00
James Raile, Committee Clerk	74.00
Sandra Hohbein, Committee Clerk	74.00
Lois Schmidt, Committee Clerk	70.00
James McWilliams, Committee Clerk	70.00
Kristin Reich, Committee Clerk	70.00
Judith Kallis, Committee Clerk	70.00
Diana Bossert, Assistant Committee Clerk	62.00
Bert Knell, Assistant Committee Clerk	62.00
Bernice Clark, Deputy Sergeant-at-Arms	62.00
Craig Perry, Assistant Sergeant-at-Arms	58.00
Pamela Washburn, Assistant Sergeant-at-Arms	58.00
Brenda Huff, Assistant Sergeant-at-Arms	58.00
Gloria Olson, Chief Page and Bill Book Clerk	68.00
Phyllis Connolly, Calendar Clerk	74.00
Barbara Larson, Desk Page	58.00

Rollo Gerrard, Page and Bill Book Clerk	58.00
Scott Power, Page and Bill Book Clerk	58.00
Ken Radenz, Page and Bill Book Clerk	58.00
Carl Strum, Page and Bill Book Clerk	58.00
Erin Peck, Page and Bill Book Clerk	58.00
Andrea Thon Emerson, Page and Bill Book Clerk	58.00
James Mandigo, Page and Bill Book Clerk	58.00
Steven Alt, Page and Bill Book Clerk	58.00
Marion Bassingwaite, Page and Bill Book Clerk	58.00
Arlene Flanders, Telephone Attendant	58.00
Danya Dietrich, Telephone Attendant	58.00
Irma Holmstrom, Telephone Attendant	58.00
Nancy Hausauer, Telephone Attendant	58.00
Patricia Smith, Telephone Page	58.00
Margaret Puetz, Information Desk Attendant	58.00
Herman Jacobsen, Chief Bill and Journal Room Clerk	70.00
Audrey Ely, Bill Room Clerk	58.00
Elias Nemer, Bill Room Clerk	58.00
Faye Caya, Bill Room Clerk	58.00
Herb Mittelstedt, Journal Room Clerk	58.00
Hella Keller, Journal Room Clerk	58.00
Peter Schafer, Supply Room Coordinator	58.00
Jamie Sprague, Parking Lot Attendant	58.00

## SENATE

William Parker, Secretary of the Senate	\$95.00
Michael Boyd, Assistant Secretary of the Senate	80.00
Karen Hoovestol, Desk Reporter	89.00
Mary Alice Simonson, Bill Clerk	74.00
Thomas Brusegaard, Sergeant-at-Arms	74.00
Renae Doan, Secretary to Majority Leader	80.00
Vernon Wagner, Staff Assistant to Majority Leader	74.00
Sandra Kershaw, Secretary to Minority Leader	80.00
Jim Sears, Staff Assistant to Minority Leader	74.00
Francis Bodine, Staff Assistant to Minority Leader	74.00
Georgia Clement, Payroll Clerk	70.00
Pauline Ziegler, Chief Committee Clerk	78.00
Susan Odell, Appropriations Committee Clerk	78.00
LaVonne Pietsch, Assistant Appropriations Committee Clerk	74.00
Carol Kolodejchuk, Committee Clerk	74.00
Sharon Renfrow, Committee Clerk	74.00
Barbara Klein, Committee Clerk	74.00
Vicki Eastgate, Committee Clerk	74.00
Tana Josserand, Committee Clerk	74.00
Candace Makeeff, Committee Clerk	70.00
Maria Effertz, Committee Clerk	70.00
Desiree Truscott, Committee Clerk	70.00
Kathryn Lillemon, Committee Clerk	70.00
Sherry Graham, Committee Clerk	70.00
Linda Wadman, Assistant Committee Clerk	62.00
Scott Wagner, Deputy Sergeant-at-Arms	62.00
John Wanser, Assistant Sergeant-at-Arms	58.00
John Clement, Assistant Sergeant-at-Arms	58.00
Colleen Popelka, Assistant Sergeant-at-Arms	58.00
Jack Neumann, Chief Page and Bill Book Clerk	68.00
Dan York, Desk Page	58.00

Francis Ely, Calendar Clerk	74.00
Kylah Aull, Page and Bill Book Clerk	58.00
Christian Andersen, Page and Bill Book Clerk	58.00
Valerie Johnson, Page and Bill Book Clerk	58.00
Althea Yantzer, Page and Bill Book Clerk	58.00
Carol Smith, Page and Bill Book Clerk	58.00
E. Duke Schneider, Chief Telephone Attendant	68.00
Delores Knutson, Telephone Attendant	58.00
Madonna Silvernagel, Telephone Attendant	58.00
Shirley Pasicznyk, Telephone Attendant	58.00
Sara Sorenson, Telephone Attendant	58.00
Glenn Erickson, Telephone Page	58.00
Marilyn Quamme, Information Desk Attendant	58.00
Ledores Robey, Bill Room Clerk	58.00
Randy Tangen, Bill Room Clerk	58.00
Burnetta Barth, Bill Room Clerk	58.00
Walter Schramm, Journal Room Clerk	58.00
Frank Zent, Journal Room Clerk	58.00
Nettie Monroe, Journal Room Clerk	58.00
Charles Holmes, Parking Lot Attendant	58.00

**BE IT FURTHER RESOLVED**, that each employee of the Fifty-fourth Legislative Assembly is entitled to an additional one dollar per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least 45 days, as either an employee of the House or the Senate, and to receive this additional compensation, which may not exceed \$10 per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

**BE IT FURTHER RESOLVED**, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided by this resolution for that employee ceases effective the last day of employment.

Filed January 20, 1995



**CHAPTER 659****HOUSE CONCURRENT RESOLUTION NO. 3016**

(Representatives Brown, Carlisle, Aarsvold, Kretschmar, Olson)

(Senators Nalewaja, Andrist)

**COMMUNITY NOTICE OF SEX OFFENDER STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing a community notification process by which communities would be informed of the release of a convicted sexual offender and of persons charged with or convicted of sexual offenses.

**WHEREAS**, the safety of children is increasingly threatened by sexual predators and other violent offenders; and

**WHEREAS**, communities across the United States are devising ways to notify their citizens as to the whereabouts of persons charged with or convicted of sexual offenses; and

**WHEREAS**, before implementing such a notification process, there should be thorough consideration of all the implications of such an effort, including constitutional issues, the impact on victims, and the unique nature of North Dakota communities;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of providing a community notification process by which communities would be informed of the release of a convicted sexual offender and of persons charged with or convicted of sexual offenses; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 3, 1995

**CHAPTER 660****HOUSE CONCURRENT RESOLUTION NO. 3017**

(Representatives Kempenich, Brown)  
(Senators Wanzek, Bowman)

**FEDERAL MANDATE CESSATION URGED**

A concurrent resolution urging Congress and the President to consider carefully the burden, consequences, and impact of federal legislation upon states and political subdivisions and to immediately cease all mandates.

**WHEREAS**, the power of the federal government is that which is delegated to it by the Constitution of the United States, the Tenth Amendment to the Constitution of the United States established the roles of the federal government and state governments, and the federal government was created as an agent of the states; and

**WHEREAS**, the traditional role of the federal government as the unified voice of the several states is subverted when Congress and the President enact laws that unnecessarily mandate the activities of state and local governments and violate the spirit of the Tenth Amendment of the Constitution of the United States and are beyond the federal government's constitutionally delegated authority; and

**WHEREAS**, states and political subdivisions are struggling under the burden of federal legislative and regulatory requirements that increase the fiscal pressures on state and local governments and reduce the ability of state and local governments to meet the needs and wishes of their constituents;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Congress and the President of the United States to consider carefully the substantial legislative and regulatory burden and consequences that have been imposed by the federal government upon states and political subdivisions and to immediately cease all mandates; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to members of the North Dakota Congressional Delegation and the President of the United States.

Filed April 10, 1995

**CHAPTER 661****HOUSE CONCURRENT RESOLUTION NO. 3019**

(Representatives Kliniske, Bernstein, Mickelson, Poolman)

(Senators Nalewaja, Schobinger)

**HIGHER EDUCATION RAPE VICTIM ASSISTANCE  
URGED**

A concurrent resolution urging all public and private institutions of higher education in the state to take action with respect to assisting rape victims and publicizing rapes that occur on college or university campuses.

**WHEREAS**, the National Victim Center reports that one out of six women will be raped before they obtain their college degree; and

**WHEREAS**, a national survey of over 6,000 students on 32 college campuses revealed that 85 percent of rape incidents occurred among students who knew one another and five percent of the attacks involved more than one assailant; and

**WHEREAS**, 75 percent of the victims of acquaintance rape did not identify their experience as rape and none of the males involved believed they had committed a crime; and

**WHEREAS**, more than 90 percent of the women raped did not report the incident to the police; and

**WHEREAS**, most higher education institutions in North Dakota do not have formal policies or procedures that deal adequately with acquaintance rape or gang rape; and

**WHEREAS**, higher education institutions have a legal and moral responsibility to protect the safety of members of their academic communities;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That all public and private institutions of higher education in the state are urged to provide information to victims of alleged incidents of rape regarding available options the victim may pursue; to respond promptly to the options selected by the victim; to establish and utilize clear and consistent sexual assault policies which may be incorporated into the current disciplinary policies of each campus; to develop, publicize, and enforce clear and consistent policies for taking appropriate actions against members of the campus community who participate in rape that occurs on the property of the institution or at a campus-related function or activity; to add specific language to the student codes of conduct and the residence hall rules prohibiting rape and other forms of sexual battery; to provide all incoming students with information on rape; to report all reports of sexual assault in their annual reports as mandated by the Crime Awareness and Campus Security Act of 1990; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the president of each private or public institution of higher education in North Dakota.

Filed March 31, 1995

**CHAPTER 662****HOUSE CONCURRENT RESOLUTION NO. 3020**  
(Representative Austin)**CHILDREN'S HEALTH CARE NEEDS RECOGNITION**

A concurrent resolution urging the Governor to recognize the North Dakota Interagency Coordinating Council's concerns relating to the health care needs of children and that any health care reform should ensure that children and families with special needs have access to physical and emotional health care.

**WHEREAS**, the fundamental goal of health care reform is to provide all citizens with the security of adequate quality health care; and

**WHEREAS**, a disproportionately large number of uninsured or underinsured members of our society are children; and

**WHEREAS**, children are the greatest natural resource that a society can protect and that they are, in many cases, medically and economically vulnerable;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Governor to recognize and work to address the concerns of the North Dakota Interagency Coordinating Council, including that health care for families and children with special needs be universally available to all citizens no matter their age or preexisting medical conditions; that appropriate and necessary care be available without regard to a family's financial situation; that a reasonable form of reimbursement to health care providers be included in any legislative proposals; that a system coordinating the health care and emotional needs of children with special needs and their families be established and maintained; that the education of health care providers be continued to the degree that our society demands; that the health care and emotional needs of children with special needs and their families be provided by practitioners in this state; and that goals to maintain prevention, education, individualized financing, and flexibility in providing health and emotional support be considered in a major planning system for each family; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the Governor.

Filed March 20, 1995

**CHAPTER 663****HOUSE CONCURRENT RESOLUTION NO. 3021**

(Representatives Svedjan, Rydell)  
(Senators Nalewaja, DeMers, Mathern)

**FETAL ALCOHOL SYNDROME STUDY**

A concurrent resolution directing the Legislative Council to study the issues and concerns relating to fetal alcohol syndrome.

**WHEREAS**, fetal alcohol syndrome is the leading identifiable cause of mental retardation and neurological deficit in the United States; and

**WHEREAS**, the child and adult populations of persons with fetal alcohol syndrome in North Dakota could be as high as 1,124; and

**WHEREAS**, between 10 and 18 children are born with fetal alcohol syndrome in North Dakota each year; and

**WHEREAS**, the cost of caring for a person with fetal alcohol syndrome over a lifetime is estimated to exceed \$1.4 million; and

**WHEREAS**, more than two-thirds of children with fetal alcohol syndrome in North Dakota are in foster care or have been adopted and less than 20 percent remain with a biological parent; and

**WHEREAS**, the neurologic deficits associated with fetal alcohol syndrome are lifelong and some persons with fetal alcohol syndrome have lower IQ's as adults than they had as children and adolescents; and

**WHEREAS**, adolescents and adults who do not have appropriate services have a high rate of criminal activity which frequently leads to incarceration; and

**WHEREAS**, early intervention has been shown to reduce both the number of children with fetal alcohol syndrome and has been shown to mitigate many of the developmental disabilities and behavior problems;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the issues and problems relating to fetal alcohol syndrome, including a review of the involvement in prevention and treatment by various state agencies; strategies to enhance early recognition of fetal alcohol syndrome, identify at-risk women, facilitate early entry into chemical dependency programs, identify the most appropriate service model for adolescents and adults with fetal alcohol syndrome, and determine the cost of the program; a survey to identify the number of persons with dual diagnosis of mental retardation or a tridiagnosis of substance abuse, mental retardation, and mental illness who have a history consistent with fetal alcohol syndrome; a determination of the relationship between fetal alcohol syndrome and criminal behavior; and a determination of the feasibility of developing a fetal alcohol syndrome work group at each regional human service center; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

**Filed March 31, 1995**

**CHAPTER 664****HOUSE CONCURRENT RESOLUTION NO. 3022**

(Representatives Svedjan, Rydell)  
(Senators DeMers, Mathern)

**LOCAL PUBLIC HEALTH UNIT STUDY**

A concurrent resolution directing the Legislative Council to study the structure and function of local public health units.

**WHEREAS**, this state has city health departments, county health districts, and multicounty health districts; and

**WHEREAS**, the functions assigned to these public health units range from the delivery of health services to the regulation and inspection of commercial facilities; and

**WHEREAS**, health care reform efforts have not addressed the present or future role of these health units in delivering health services or in regulating or inspecting facilities;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the structure and function of local public health units; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995



**CHAPTER 665****HOUSE CONCURRENT RESOLUTION NO. 3023****(Representatives Mahoney, Svedjan)****LONG-TERM CARE INSURANCE STUDY**

A concurrent resolution directing the Legislative Council to study the availability, coverage, and regulation of long-term care insurance.

**WHEREAS**, North Dakota citizens are living longer; and

**WHEREAS**, the need for both home and institutional services increases with age; and

**WHEREAS**, long-term care insurance is promoted as providing a means for individuals to provide private coverage of expenses of long-term care and to protect assets from depletion; and

**WHEREAS**, long-term care insurance may help prevent transfers of assets; and

**WHEREAS**, premiums for long-term care insurance may be tax deductible; and

**WHEREAS**, medical savings accounts may be used to finance long-term care; and

**WHEREAS**, the Department of Human Services is proposing to spend \$215,300,000 in the 1995-97 biennium for nursing facility and swing bed services, which is an increase of \$35.9 million over the 1993-95 biennium; and

**WHEREAS**, the development of private insurance underwriting of long-term care services would benefit consumers, long-term care providers, and the state; and

**WHEREAS**, purchasers of long-term care insurance may be protected by state regulation; and

**WHEREAS**, the increasing reliance on Medicaid and other forms of public assistance severely impacts the long-term care industry as well as the ability of public agencies to provide assistance;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the availability, coverage, and regulation of long-term care insurance; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 3, 1995

**CHAPTER 666****HOUSE CONCURRENT RESOLUTION NO. 3025**

(Representatives Stenehjern, Coats)  
(Senators Freborg, Krauter)

**CHIROPRACTIC CENTENNIAL RECOGNIZED**

A concurrent resolution to acknowledge the one hundredth anniversary of the founding of the chiropractic profession and the significant contribution that chiropractic has made to the health and welfare of Americans.

**WHEREAS**, the chiropractic profession was founded on September 18, 1895, by Daniel David Palmer in Davenport, Iowa, in the United States of America, and will therefore celebrate its centennial on September 18, 1995; and

**WHEREAS**, the profession of chiropractic is practiced by doctors of chiropractic throughout the world, including 50,000 in this country; and

**WHEREAS**, contemporary standards in chiropractic education, research, and practice have led to ever-broadening acceptance of the benefits of chiropractic health care by the public and the health care community; and

**WHEREAS**, each year millions of Americans now choose chiropractic health care for the restoration and maintenance of their health by natural methods and without the use of drugs or surgery;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly officially acknowledges the one hundredth anniversary of the founding of the chiropractic profession and the significant contribution that chiropractic has made to the health and welfare of Americans.

Filed April 3, 1995

**CHAPTER 667****HOUSE CONCURRENT RESOLUTION NO. 3026**

(Representative Dorso)

(Senator G. Nelson)

**HIGHER EDUCATION STATEWIDE SYSTEM URGED**

A concurrent resolution urging the State Board of Higher Education to continue collaborative activities with respect to a statewide delivery system, program enhancement, technological advancement, and reduction in duplicative programming and administrative services.

**WHEREAS**, a 1986 advisory panel on higher education recommended the State Board of Higher Education develop a true, integrated system of higher education; and

**WHEREAS**, the 1987 Legislative Assembly passed a concurrent resolution urging the State Board of Higher Education to implement the recommendations of the advisory panel; and

**WHEREAS**, the State Board of Higher Education created the North Dakota University System in 1990 as a result of those recommendations; and

**WHEREAS**, advances in technology make it advantageous for the institutions of higher education to collaborate on academic offerings throughout the state; and

**WHEREAS**, many students cannot take advantage of academic offerings because of the distances involved; and

**WHEREAS**, the State Board of Higher Education's seven-year plan includes a commitment to providing broad access to programs and courses, including outreach and lifelong learning; and

**WHEREAS**, limited state resources require efficiencies in administration and the sharing of resources to serve the future needs of traditional and nontraditional students; and

**WHEREAS**, the role of higher education must include meeting the state's economic development needs, creating employment opportunities in the state, being responsive to the needs of the business community, delivering information, technology, and training in the latest available manner, and anticipating and preparing to address the future needs of the state and its citizens;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the State Board of Higher Education to continue its emphasis on developing a statewide delivery system in which the multiple campuses take on a collaborative role to better serve the citizens of this state, to continue its collaborative efforts in the area of program enhancement and in the elimination of barriers within the student and course transfer process, and

to continue its emphasis on technological advancement in order to reduce duplicative programming and administrative services; and

**BE IT FURTHER RESOLVED**, that the Secretary of State send a copy of this resolution to the State Board of Higher Education.

Filed March 31, 1995

**CHAPTER 668****HOUSE CONCURRENT RESOLUTION NO. 3027**

(Representatives Byerly, Johnson, Sitz)

(Senators Nalewaja, Solberg, Yockim)

**AMTRAK SERVICE IMPROVEMENT URGED**

A concurrent resolution urging the President and the Congress of the United States to continue daily Amtrak service to North Dakota, to improve Amtrak's ability to compete with other carriers, and to provide for a strong Amtrak system as part of any national transportation system.

**WHEREAS**, Amtrak is energy-efficient and environmentally beneficial, consuming about half as much energy per passenger-mile as airlines and causing less air pollution; and

**WHEREAS**, Amtrak is nine times safer than driving on a per passenger-mile basis, and continues to operate in severe weather conditions, when other carriers cannot; and

**WHEREAS**, Amtrak provides mobility to citizens of many smaller communities poorly served by air and bus services, as well as to those senior citizens, persons with disabilities, students, and persons with medical conditions preventing them from flying who need trains as a travel option; and

**WHEREAS**, Amtrak travel rose 48 percent from 1982 to 1993 and Amtrak dramatically improved coverage of its operating costs from revenues; and

**WHEREAS**, expansion of Amtrak service by using existing rail rights of way would cost less and use less property than new highways and airports, and would further increase Amtrak's energy-efficiency advantage; and

**WHEREAS**, federal investment in Amtrak has fallen in the last decade while it has risen for airports and highways; and

**WHEREAS**, Amtrak pays a fuel tax that airlines do not pay; and

**WHEREAS**, Amtrak workers and vendors pay more in taxes than the federal government invests in Amtrak;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the President and the Congress of the United States to continue seven-day-a-week Amtrak service in North Dakota; continue to fund Amtrak at present or higher levels; exempt Amtrak from fuel taxes that airlines do not pay; and include a strong Amtrak system as part of any national transportation system; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States and each member of the North Dakota Congressional Delegation.

Filed March 14, 1995

## **CHAPTER 669**

### **HOUSE CONCURRENT RESOLUTION NO. 3033**

(Representatives Stenehjem, Sveen, Grosz, Klein)

(Senators Kringstad, Thane)

#### **MILK STABILIZATION BOARD STUDY**

A concurrent resolution directing the Legislative Council to study the role and mission of the Milk Stabilization Board, including the effectiveness and necessity of regulating the production, transportation, processing, storage, distribution, and sale of milk and milk products.

**WHEREAS**, the Milk Stabilization Board was established in 1967 to eliminate unfair trade practices in the milk industry; and

**WHEREAS**, the board is authorized to regulate the production, transportation, processing, storage, distribution, and sale of milk; and

**WHEREAS**, there may be new methods to promote, foster, and encourage the production and maintenance of an adequate and healthful supply of milk and milk products;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the Milk Stabilization Board, including the effectiveness and necessity of regulating the production, transportation, processing, storage, distribution, and sale of milk and milk products; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 3, 1995

**CHAPTER 670****HOUSE CONCURRENT RESOLUTION NO. 3038**

(Representatives Schimke, Rydell, Boucher, Christenson)

**STUDENT EXTRACURRICULAR ACTIVITIES STUDY**

A concurrent resolution directing the Legislative Council to study the extent and value of elementary and high school student participation in school-sanctioned extracurricular activities, the effect of extracurricular activities on the education of individual students and on teachers and administrators, and the financial impact of extracurricular activities on school district and family budgets.

**WHEREAS**, numerous elementary and high school students are participating in school-sanctioned extracurricular activities; and

**WHEREAS**, school-sanctioned extracurricular activities may require the absence of students from regular classes; and

**WHEREAS**, some school districts are now charging fees for student participation; and

**WHEREAS**, school-sanctioned extracurricular activities may require the direct or indirect participation of school teachers and administrators and may affect hiring practices for such personnel; and

**WHEREAS**, school-sanctioned extracurricular activities may require the direct or indirect financial involvement of school districts;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the extent and value of elementary and high school student participation in school-sanctioned extracurricular activities, the effect of extracurricular activities on the education of individual students and on teachers and administrators, and the financial impact of extracurricular activities on school district and family budgets; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 31, 1995



**CHAPTER 671****HOUSE CONCURRENT RESOLUTION NO. 3039**

(Representatives Aarsvold, Kaldor, Grosz)

(Senators Kinnoin, St. Aubyn, Wanzek)

**AIR TRANSPORTATION STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing four major regional air transportation terminals in the state and of developing a system of intrastate commuter air and ground transportation to serve those regional facilities.

**WHEREAS**, adequate international air service is critical to the economic future of this state; and

**WHEREAS**, the present airfare structure places North Dakota citizens and businesses at a comparative economic disadvantage; and

**WHEREAS**, recent trade agreements, including the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, will necessitate convenient and dependable access to North Dakota industry and business; and

**WHEREAS**, attraction and retention of major international air carriers has been a persistent and reoccurring problem; and

**WHEREAS**, federal subsidies for rural air service to North Dakota cities are in jeopardy with the impending loss of funding from the United States Department of Transportation's essential air service program;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of establishing four major regional air transportation terminals and of developing a system of intrastate commuter air and ground transportation to serve those regional facilities; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 3, 1995

**CHAPTER 672****HOUSE CONCURRENT RESOLUTION NO. 3040**

(Representatives Klein, Kretschmar)

**GAMING AND RACING COMMISSIONS MERGER  
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of merging the State Gaming Commission and the State Racing Commission into a single commission.

**WHEREAS**, the function of the State Gaming Commission is to adopt rules relating to methods of play, conduct, and promotion of games of chance; and

**WHEREAS**, the function of the State Racing Commission is to provide for live or simulcast horse racing or simulcast dog racing and to adopt rules for the administration, implementation, and regulation of racing activities; and

**WHEREAS**, the goals of games of chance and racing are similar in that the net proceeds of games of chance and racing must be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses; and

**WHEREAS**, the merging of the State Gaming Commission and the State Racing Commission may provide a most cost-effective and efficient method of managing matters pertaining to games of chance and racing;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of merging the State Gaming Commission and the State Racing Commission into a single commission; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 3, 1995

**CHAPTER 673****HOUSE CONCURRENT RESOLUTION NO. 3043**

(Representatives Kretschmar, Dorso, Berg, Oban)

(Senators G. Nelson, Wogsland)

**LEGISLATIVE PROCESS STUDY**

A concurrent resolution directing the Legislative Council to study the legislative environment and process.

**WHEREAS**, the citizen legislator tradition in North Dakota should be preserved and legislative expertise and experience should be enhanced to deal with the increasing number and complexity of issues facing the state; and

**WHEREAS**, legislators should encourage improvements while protecting the strengths of the legislative institution; and

**WHEREAS**, there have been significant improvements over the years in the process the Legislative Assembly uses to make policymaking more efficient and open to greater public participation and scrutiny, improvements in the constitutional framework of the legislative branch, improvements that resulted in better facilities and technology for legislative deliberation, and improvements in the information and staff resources available to legislative committees and legislators; and

**WHEREAS**, it is important to build upon this commitment to the strength of the legislative institution and to ensure that the Legislative Assembly continues as a strong, effective institution that commands wide public respect and confidence; and

**WHEREAS**, informed discussion among legislators, former legislators, and citizens may be beneficial to identify the future roles, responsibilities, and steps to strengthen the legislative institution in this state;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the legislative environment and process; and

**BE IT FURTHER RESOLVED**, that the Legislative Council is encouraged to include former legislators and other citizens as members of any interim committee designated to conduct this study; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 31, 1995

**CHAPTER 674****HOUSE CONCURRENT RESOLUTION NO. 3045**

(Representatives Maragos, Rydell, Boucher)  
(Senators Lee, Mathern)

**COUNTY SOCIAL SERVICE AGENCY STUDY**

A concurrent resolution directing the Legislative Council to study the responsibilities of county social service agencies as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services.

**WHEREAS**, North Dakota Century Code Chapter 50-01 establishes a county administered economic assistance delivery system and Chapter 50-06 establishes the Department of Human Services as the state agency responsible for administering economic assistance programs; and

**WHEREAS**, Chapter 50-06 establishes the Department of Human Services and its various components as the agency responsible for administering programs for children and families, persons with developmental disabilities, crippled children, aging services, mental health services, and alcohol and drug services; and

**WHEREAS**, Section 50-06-05.18 directs the Department of Human Services to direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department; and

**WHEREAS**, Section 50-06-05 directs the Department of Human Services to carry out various human service programs and regulatory functions which the department has delegated to county social service agencies; and

**WHEREAS**, this method of delivering economic assistance and other types of human services has evolved from the public relief programs of the 1930s Great Depression, the Great Society programs of the 1960s, and the deinstitutionalization movement of the 1970s and 1980s; and

**WHEREAS**, the role of county government in this delivery system is ambiguous and its responsibility to its supervising agency is very open to administrative interpretation; and

**WHEREAS**, suggestions have been made that there may be alternatives that would improve the efficiency and the effectiveness of this delivery system;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the responsibilities of county social service agencies as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

## CHAPTER 675

### HOUSE CONCURRENT RESOLUTION NO. 3047

(Representatives Aarsvold, Austin, Bateman, Belter, Berg, Bernstein, Boehm, Boucher, Brown, Byerly, Carlisle, Carlson, Christenson, Christopherson, Clark, Clayburgh, Coats, Dalrymple, Delmore, Delzer, DeKrey, DeWitz, Dobrinski, Dorso, Drovdal, Freier, Froseth, Galvin, Gerntholz, Glassheim, Gorder, Gorman, Grosz, Grumbo, Guleson, Gunter, Hagle, Hanson, Hausauer, D. Henegar, K. Henegar, Holm, Howard, Huether, Jacobs, Johnson, Kaldor, Keiser, Kelsch, Kempenich, Kerzman, Klein, Kliniske, Koppelman, Kretschmar, Kroeber, Kunkel, Laughlin, Lloyd, Mahoney, Maragos, Martin, Martinson, Mickelson, Monson, Mutzenberger, Nicholas, Nichols, Nottestad, Oban, Olson, Payne, Poolman, Price, Rennerfeldt, Retzer, Rydell, Sabby, Sandvig, Schimke, Schmidt, Shide, Sitz, Skarphol, Soukup, Stenehjerm, Svedjan, Sveen, Thompson, Thoreson, Timm, Tollefson, Torgerson, Wald, Walker, Wardner, Wentz, Wilkie)

(Senators Andrist, Bowman, Christmann, DeMers, Freborg, Goetz, Grindberg, Heinrich, Heitkamp, Holmberg, Kelsh, Kinnoin, Krauter, Krebsbach, Kringstad, Langley, LaFountain, Lee, Lindaas, Lips, Mathern, Mushik, Mutch, Naaden, Nalewaja, C. Nelson, G. Nelson, Nething, O'Connell, Redlin, Robinson, Sand, Scherber, Schobinger, Solberg, St. Aubyn, B. Stenehjerm, W. Stenehjerm, Streibel, Tallackson, Tennesfos, Thane, Tomac, Traynor, Urlacher, Wanzek, Watne, Wogsland, Yockim)  
(Approved by the Delayed Bills Committee)

### WOMEN IN LEGISLATURE CENTENNIAL

A concurrent resolution celebrating the 100th year of women serving in state legislatures.

**WHEREAS**, women were elected to serve in state Legislative Assemblies even before American women received the right to vote; and

**WHEREAS**, in January 1895, the first three women were sworn in to serve as state legislators; and

**WHEREAS**, women have served diligently and enthusiastically in this Legislative Assembly and have devoted their lives to their communities and to this state; and

**WHEREAS**, the knowledge, expertise, and wise leadership of women legislators have served this state well in the past and will enhance the quality of our legislation in the Twenty-first Century; and

**WHEREAS**, the Legislative Assembly recognizes the outstanding contributions and accomplishments made by former and current women legislators; and

**WHEREAS**, the Legislative Assembly recognizes the need to celebrate the role of women in the Legislative Assembly and in the development of the state and

to encourage public knowledge and awareness of the roles they have played and continue to play; and

**WHEREAS**, the National Foundation for Women Legislators, Incorporated, which serves as the educational arm of the National Order of Women Legislators, the oldest professional association of women legislators in this country, is coordinating state, regional, and national celebrations to commemorate 100 years of women serving in state legislatures;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Assembly of North Dakota joins in the 100th year celebration of women in state legislatures and extends its appreciation to all the women who have served and are serving in the North Dakota Legislative Assembly; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to every woman legislator serving in the Legislative Assembly, to every woman legislator, still living, who has served in the North Dakota Legislative Assembly, and to the National Foundation for Women Legislators, Incorporated.

Filed March 27, 1995

# **SENATE CONCURRENT RESOLUTIONS**

## **CHAPTER 676**

### **SENATE CONCURRENT RESOLUTION NO. 4001**

(Legislative Council)

(Interim Budget Committee on Youth Services)

(Senator Robinson)

(Representatives Kunkel, Boucher)

### **SEX OFFENSES AGAINST CHILDREN DISPOSITION STUDY**

A concurrent resolution directing the Legislative Council to study dispositional alternatives available in cases involving sexual offenses against children, the disposition of cases involving perpetrators who do not attend court-ordered treatment, and the courts' use of and compliance with North Dakota Century Code Chapter 12.1-35 and Rule 803(24) of the North Dakota Rules of Evidence.

**WHEREAS**, two-thirds of the prison sentences for convicted sex offenders are less than three years in length, not allowing sufficient time in some cases for completion of the State Penitentiary sex offender treatment program; and

**WHEREAS**, 55 percent of the 113 sex offenders incarcerated at the State Penitentiary as of June 1994 are not required by court order to participate in any sex offender treatment program; and

**WHEREAS**, judges may fail to follow the recommendations of child sex offender treatment specialists and fail to take appropriate action when convicted child sex offenders refuse to participate in the treatment that is a condition of their probation or parole; and

**WHEREAS**, North Dakota Century Code Chapter 12.1-35 permits an individual to accompany or support a witness under the age of 14; and

**WHEREAS**, Rule 803(24) of the North Dakota Rules of Evidence permits an out-of-court statement by a child under the age of 12 about sexual abuse to be admissible as evidence; and

**WHEREAS**, concerns have been raised that the statutory changes and rules of evidence designed to improve the handling of court cases involving children have been misinterpreted or not utilized;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study dispositional alternatives available in cases involving sexual offenses against children, the disposition of cases involving



perpetrators who do not attend court-ordered treatment, and the courts' use of and compliance with North Dakota Century Code Chapter 12.1-35 and Rule 803(24) of the North Dakota Rules of Evidence; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 28, 1995

**CHAPTER 677****SENATE CONCURRENT RESOLUTION NO. 4002**

(Legislative Council)  
(Interim Budget Committee on Youth Services)  
(Senator Robinson)  
(Representatives Rydell, Johnson)

**CHILDREN'S SERVICES DELIVERY SYSTEM STUDY**

A concurrent resolution directing the Legislative Council to study the implementation of the 1993-94 interim Budget Committee on Youth Services recommendations to enhance the children's services delivery system in North Dakota.

**WHEREAS**, the Legislative Council's 1993-94 interim Budget Committee on Youth Services studied the provision of services for children in North Dakota and made recommendations to the Fifty-fourth Legislative Assembly to improve North Dakota's children's services delivery system; and

**WHEREAS**, the recommendations included the development, by state agencies responsible for children's services, of specific goals and objectives to enhance children's services in North Dakota and the development of a mechanism to monitor the state's progress in achieving these goals; and

**WHEREAS**, concerns were expressed during the study regarding the method of allocating funds to counties for child abuse and neglect investigations; and

**WHEREAS**, many federal, state, and local government programs provide services to children and the coordination and collaboration among children's service providers is essential in order to provide efficient and effective children's services; and

**WHEREAS**, regional children's services coordinating committees established by the Fifty-third Legislative Assembly are organized and, under the guidance of the state Children's Services Coordinating Committee, are developing community plans for children's services;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the implementation of the 1993-94 interim Budget Committee on Youth Services recommendations to enhance the children's services delivery system in North Dakota, including monitoring the efficiency and effectiveness of the children's services delivery system, monitoring state agencies' and other entities' progress toward achieving the goals and objectives developed for North Dakota's children's services, and reviewing the coordination and collaboration among children's service providers at both the state and local level; and

**BE IT FURTHER RESOLVED**, that the Children's Services Coordinating Committee periodically report to the Legislative Council or a committee designated by the Council on the Children's Services Coordinating Committee's progress toward meeting its goals and objectives for improving the status of children and families in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 28, 1995

**CHAPTER 678****SENATE CONCURRENT RESOLUTION NO. 4003**

(Legislative Council)

(Interim Budget Committee on Youth Services)

(Senator Robinson)

(Representatives Johnson, Martin)

**HOUSING FUNDING INITIATIVE STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and adaptability of a long-term funding initiative to make available housing for families who are low income, homeless, or disabled, or who require transitional housing to assist them toward independent living.

**WHEREAS**, the Child Welfare League of America has recommended a study of housing needs in the state; and

**WHEREAS**, the North Dakota Housing Needs Assessment commissioned by the Housing Finance Agency in 1992 studied the housing needs of North Dakota and identified thirteen action areas; and

**WHEREAS**, the 1994 Comprehensive Housing Affordability Strategy Update prepared by the Office of Intergovernmental Assistance identified a need for more affordable housing in North Dakota; and

**WHEREAS**, an assessment of housing needs in the state indicates that there is a need to improve the quality and condition of the existing housing stock for low-income households; and

**WHEREAS**, an increasing number of homeless persons in the state creates a need for emergency housing for homeless individuals and families; and

**WHEREAS**, agencies and organizations providing services to the elderly and to persons with disabilities have expressed the need for more affordable, accessible housing units; and

**WHEREAS**, providers across the state indicate that there is a need to develop more independent living opportunities for the developmentally disabled population;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the feasibility and adaptability of a long-term funding initiative to make available housing for families who are low income, homeless, or disabled, or who require transitional housing to assist them toward independent living; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 8, 1995

**CHAPTER 679****SENATE CONCURRENT RESOLUTION NO. 4004**

(Legislative Council)  
(Interim Education Finance Committee)  
(Senators Yockim, C. Nelson)  
(Representative Kaldor)

**SCHOOL CONSTRUCTION STUDY**

A concurrent resolution directing the Legislative Council to study the needs of school districts regarding buildings and facilities and the role of the state in the construction, maintenance, and renovation of school buildings and facilities.

**WHEREAS**, the children of North Dakota should be afforded a quality education; and

**WHEREAS**, the provision of a quality education is to some extent contingent upon the facilities and the environment in which it is presented; and

**WHEREAS**, the construction, maintenance, and renovation of school buildings and facilities require significant local monetary infusions; and

**WHEREAS**, the ability of school districts to provide adequate buildings and facilities varies throughout the state;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the needs of school districts regarding buildings and facilities and the role of the state in the construction, maintenance, and renovation of school buildings and facilities; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 1, 1995

**CHAPTER 680****SENATE CONCURRENT RESOLUTION NO. 4006**

(Legislative Council)  
(Interim Education Services Committee)  
(Senators Scherber, St. Aubyn)  
(Representatives Kunkel, Aarsvold, Kroeber)

**MIDDLE SCHOOL STUDY**

A concurrent resolution directing the Legislative Council to study statutory and systemic changes necessitated by the implementation of middle school concepts.

**WHEREAS**, students between the ages of 10 and 14 are in a period of human development now recognized as being extremely complex; and

**WHEREAS**, students in their middle learning years benefit most when their age specific characteristics and developmental processes are recognized within their school environments; and

**WHEREAS**, the creation of middle schools and the implementation of middle school concepts has significantly increased student knowledge and competence and enabled a healthy student independence; and

**WHEREAS**, recognizing middle level learning as a component of education equal to elementary and secondary levels will require statutory and systemic changes in areas including finance and certification;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study statutory and systemic changes necessitated by the implementation of middle school concepts; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 681****SENATE CONCURRENT RESOLUTION NO. 4007**

(Legislative Council)

(Interim Education Services Committee)

(Senators Scherber, St. Aubyn)

(Representatives Kroeber, Kunkel, Aarsvold, Gulleson)

**TEACHER DEVELOPMENT STUDY**

A concurrent resolution directing the Legislative Council to study the delivery and effectiveness of, and costs associated with, professional growth and development programs for teachers.

**WHEREAS**, teachers are charged with assisting in the care and tutelage of our most precious resource--our children; and

**WHEREAS**, teachers are expected to meet high academic standards and to understand and utilize new and emerging pedagogical techniques; and

**WHEREAS**, the need to assist teachers in becoming prepared to accommodate the wide array of students and student needs must be recognized as a statewide duty; and

**WHEREAS**, time, effort, and financial resources are significant factors in ensuring that our teachers are adequately prepared;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the delivery and effectiveness of, and costs associated with, professional growth and development programs for teachers; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 682****SENATE CONCURRENT RESOLUTION NO. 4008**

(Legislative Council)

(Interim Employee Benefits Programs Committee)

(Senators Lindaas, Krebsbach)

(Representatives Clayburgh, Wardner, Austin)

**STATE INVESTMENT STUDY**

A concurrent resolution directing the Legislative Council to study the state's investment process and the investment of state funds.

**WHEREAS**, it is beneficial for the state to realize maximum investment returns while minimizing investment risk; and

**WHEREAS**, the State Investment Board oversees the investment of eight statutory funds with assets totaling approximately \$1.5 billion and four contracted funds with assets totaling approximately \$18 million; and

**WHEREAS**, the mission of the State Investment Board is to prudently invest assets entrusted to it in the best financial interests of each fund's beneficiaries; and

**WHEREAS**, the objectives of the Retirement and Investment Office include providing the greatest possible long-term benefits by maximizing the total rate of return on investments within prudent risk parameters and appropriate liquidity restraints; and

**WHEREAS**, a long-term common goal of the Public Employees Retirement System and Teachers' Fund for Retirement is to maximize benefits to public employees; and

**WHEREAS**, the adequacy of public employee retirement programs is dependent on the investment of public employee retirement funds;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the state's investment process and the investment of state funds; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 6, 1995



**CHAPTER 683****SENATE CONCURRENT RESOLUTION NO. 4010**

(Legislative Council)  
(Interim International Trade Committee)

**INTERNATIONAL TRADE STUDY**

A concurrent resolution directing the Legislative Council to establish an International Trade Committee to study international trade agreements and their effect on this state.

**WHEREAS**, states have the opportunity to grandfather state measures that are inconsistent with certain international trade agreement provisions; and

**WHEREAS**, the interim International Trade Committee held meetings and heard testimony from individuals and representatives of state departments and agencies concerned about the effect of international trade agreements on this state, and discussed various topics including inconsistent state measures under certain international trade agreement provisions, export assistance programs, and state economic development opportunities in international trade; and

**WHEREAS**, the formation of an International Trade Committee would provide a focal point for individuals and state and private economic development agencies and organizations to keep informed of developments in international trade and to develop and execute policies and plans for state development in international trade;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council establish an International Trade Committee to study requirements, deadlines, and effects of international trade agreements and to stimulate the further development of international trade in this state; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 684****SENATE CONCURRENT RESOLUTION NO. 4012**

(Legislative Council)  
(Interim Judiciary Committee)  
(Senators W. Stenehjem, Traynor, Redlin)  
(Representatives Brown, Coats)

**TRIBAL-STATE GAMING COMPACT STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of legislation governing the future negotiation, amendment, and renewal of tribal-state gaming compacts.

**WHEREAS**, tribal gaming compacts have been negotiated between the Governor and the Indian tribes in the state; and

**WHEREAS**, no statute establishes which government official or agency has the authority to enter into compact negotiation and to bind the state to the terms of a compact; and

**WHEREAS**, the Legislative Assembly desires a role in determining the contents of the compacts;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council is directed to study the feasibility and desirability of legislation governing the future negotiation, amendment, and renewal of tribal-state gaming compacts; and

**BE IT FURTHER RESOLVED**, that in conducting the study, the Legislative Council seek the involvement of representatives of the tribal governments of the state; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 10, 1995

**CHAPTER 685****SENATE CONCURRENT RESOLUTION NO. 4015**

(Legislative Council)  
(Interim Taxation Committee)

**PROPERTY TAX ASSESSMENT STUDY**

A concurrent resolution directing the Legislative Council to study the property tax assessment system of the state, with emphasis on the potential benefits to the system from improved technology and sharing of resources.

**WHEREAS**, grant funding has been provided to the North Dakota Association of Counties to conduct a study of the property tax assessment system of the state, with the stated intention that the study will focus on the benefits that may be achieved through improved technology and sharing of resources among state and local governments; and

**WHEREAS**, substantial benefits may be derived if methods can be devised to allow sharing of data among state and local governments, and the uniformity, equity, and accuracy of property tax assessments might be greatly enhanced by application of improved technology;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the property tax assessment system of the state, receive the report on the study conducted by the North Dakota Association of Counties, and concentrate attention on the feasibility and desirability of improving technology to improve the property tax assessment system of the state and to allow sharing of information and resources among state and local governments; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 2, 1995

**CHAPTER 686****SENATE CONCURRENT RESOLUTION NO. 4016**

(Legislative Council)  
(Interim Taxation Committee)

**PROPERTY TAX PREFERENCES STUDY**

A concurrent resolution directing the Legislative Council to study tax preferences, with emphasis on property tax preferences that may be granted at the discretion of political subdivisions or that were created as economic development incentives.

**WHEREAS**, the Legislative Assembly has enacted various tax preferences at different times which should be examined periodically for compatibility and effectiveness; and

**WHEREAS**, tax preferences granted at the discretion of political subdivisions may impact other political subdivisions that have no control over the granting of the preferences; and

**WHEREAS**, tax preferences created for economic development purposes should be carefully examined to determine whether they accomplish the desired objectives;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study tax preferences, with emphasis on property tax preferences that may be granted at the discretion of political subdivisions or that were created as economic development incentives; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 8, 1995

**CHAPTER 687****SENATE CONCURRENT RESOLUTION NO. 4017**

(Senators Nalewaja, Solberg, Grindberg, Robinson)  
(Representative Carlisle)

**CORONER SYSTEM STUDY**

A concurrent resolution directing the Legislative Council to study the coroner system in the state, the issuance of death certificates, and whether certain information in death certificates should be exempt from open records requirements.

**WHEREAS**, each county in the state, unless it has adopted an optional form of county government, is required to appoint a county coroner; and

**WHEREAS**, although county coroners are required by law to be licensed physicians, there is no requirement that a coroner be knowledgeable or experienced in forensic pathology; and

**WHEREAS**, a coroner specially trained in forensic pathology would likely be able to provide more accurate determinations of causes of death; and

**WHEREAS**, records of a coroner, including death certificates, are public records open to inspection;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the coroner system in the state, the issuance of death certificates, and whether certain information in death certificates should be exempt from open records requirements; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 15, 1995

**CHAPTER 688****SENATE CONCURRENT RESOLUTION NO. 4020**

(Senators Mushik, Goetz, Mathern)  
(Representative Hausauer)

**SENIOR CITIZEN HOUSING NEEDS STUDY**

A concurrent resolution directing the Legislative Council to study zoning and real estate tax laws to assess the desirability of enacting legislation relating to the housing needs and preferences of senior citizens.

**WHEREAS**, according to the American Association of Retired Persons, 54 percent of senior citizens have done very little planning regarding their housing needs for later years; and

**WHEREAS**, health status, financial needs, and desire for companionship, convenience, safety, and security from crime lead senior citizens to explore various kinds of living arrangements; and

**WHEREAS**, communities have various housing options available to meet the needs of senior citizens, including single-family dwelling units, semidetached units, multiunit buildings, subsidized housing, congregate housing, and retirement communities; and

**WHEREAS**, the Fifty-third Legislative Assembly considered, but did not adopt, legislation that would have established zoning accommodations for congregate housing or dwelling units for senior citizen occupancy;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study zoning and real estate tax laws to assess the desirability of enacting legislation relating to the housing needs and preferences of senior citizens; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 8, 1995

**CHAPTER 689****SENATE CONCURRENT RESOLUTION NO. 4021**

(Senators Holmberg, Goetz, Heinrich, G. Nelson, Streibel, Wogslund)

**FISCAL NOTE STUDY**

A concurrent resolution directing the Legislative Council to study the fiscal note process.

**WHEREAS**, legislative rules require fiscal notes on measures that have a potential impact on the revenues or expenditures of the state; and

**WHEREAS**, legislative rules require an attempt to prepare fiscal notes on measures that have a potential impact on the revenues or expenditures of cities and counties, but not schools; and

**WHEREAS**, fiscal notes are requested of state agencies determined to be in the best position to estimate the impact of proposed legislation; and

**WHEREAS**, state agencies are often unable to provide the Legislative Assembly with sufficient information to prepare fiscal notes for measures impacting local government; and

**WHEREAS**, many legislative decisions are made based on the accuracy of fiscal notes prepared by state agencies, departments, and institutions; and

**WHEREAS**, it is important for the Legislative Assembly to determine whether fiscal notes are accurate and can be relied on; and

**WHEREAS**, the Legislative Assembly has not required a review of fiscal notes in the audit of state entities;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council conduct a study of the fiscal note process to determine whether improvements can be made in the process and whether procedures can be established to measure and evaluate the accuracy of projections contained in fiscal notes; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 690****SENATE CONCURRENT RESOLUTION NO. 4022**

(Senators Wanzek, Christmann)

(Representatives Belter, Nichols, Retzer, Wald)

**TAX CREDIT FOR HEALTH INSURANCE PREMIUMS  
URGED**

A concurrent resolution urging Congress to enact legislation allowing an income tax deduction or credit for health insurance premiums.

**WHEREAS**, Congress has recently deliberated legislation to provide health care coverage for a greater number of Americans; and

**WHEREAS**, federal income tax law does not allow a general deduction for individuals who pay their own health insurance premiums; and

**WHEREAS**, employees who have health insurance coverage as a benefit of employment are not subject to income tax on the value of that insurance coverage; and

**WHEREAS**, the present income tax law is inequitable to individuals who are self-employed or employed but who must pay health insurance premiums in after-tax dollars; and

**WHEREAS**, this inequity is particularly hard on states such as North Dakota in which a large portion of the population is self-employed in agricultural production or other endeavors; and

**WHEREAS**, if Congress is truly concerned about affordable health care coverage for Americans it appears a simple means of improving affordability for many Americans is through an income tax deduction or credit for insurance premiums;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Congress of the United States to enact legislation providing an income tax deduction or credit for individuals who pay their own health insurance premiums; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the chairman of the United States House of Representatives Ways and Means Committee, the chairman of the United States Senate Finance Committee, and each member of the North Dakota Congressional Delegation.

Filed March 8, 1995



**CHAPTER 691****SENATE CONCURRENT RESOLUTION NO. 4024**  
(Senator Thane)**ECONOMIC DEVELOPMENT IMPACT STUDY**

A concurrent resolution directing the Legislative Council to study the fiscal impact of major economic development projects on political subdivisions.

**WHEREAS**, the state of North Dakota has encouraged the establishment of major economic development projects in the state; and

**WHEREAS**, the Legislative Assembly has provided fiscal incentives that have included allowing political subdivisions to grant tax exemptions to encourage the location of major economic development projects in the state; and

**WHEREAS**, many of the incentives that have been granted are long-term which provides for an opportunity for even some of the best estimates of future fiscal impact to be incorrect; and

**WHEREAS**, during a period of 10 to 20 years events unforeseen at the time a project was initiated may occur, placing an unintended heavy burden on political subdivisions;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the fiscal impact of major economic development projects on political subdivisions to determine the consequences of allowing political subdivisions to grant tax exemptions and to determine the need for a state program to assist political subdivisions where unforeseen events have occurred or may occur after a major economic development project has placed an undue and unexpected burden on local taxpayers and the local political subdivisions; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 15, 1995

**CHAPTER 692****SENATE CONCURRENT RESOLUTION NO. 4025**

(Senators Tomac, St. Aubyn)

(Representatives Byerly, Sitz)

**COMPUTER DATA ACCESS STUDY**

A concurrent resolution directing the Legislative Council to study access to computer data bases or electronically filed or stored information by state agencies.

**WHEREAS**, large volumes of public information are stored electronically and on computer data bases by the various state agencies; and

**WHEREAS**, there is no uniform method or procedure through which that information may be accessed; and

**WHEREAS**, several states have implemented or are in the process of implementing centralized procedures through which access may be provided to public information through on-line services;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of establishing a centralized procedure through which access may be provided to any computer data base or electronically filed or stored information maintained by state agencies, including the feasibility and desirability of contracting with a nongovernmental entity to collect and disseminate public information through on-line services; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 693****SENATE CONCURRENT RESOLUTION NO. 4026**

(Senators Thane, Lips)  
(Representative Stenehjem)

**STATE MILL AND ELEVATOR STUDY**

A concurrent resolution directing the Legislative Council to study the present and future role of the State Mill and Elevator.

**WHEREAS**, the State Mill and Elevator was statutorily created in 1919 to encourage and promote agriculture, commerce, and industry in this state; and

**WHEREAS**, the State Mill and Elevator has witnessed an industry progression ranging from localized agricultural endeavors to competition in a global environment; and

**WHEREAS**, although profits from the State Mill and Elevator have traditionally been transferred to the general fund to support this state and its programs, changes in the industry may require substantial capital investments to return the enterprise to profitability; and

**WHEREAS**, there is a need to review available alternatives for the future use of the State Mill and Elevator to determine which alternative best serves the interests of this state;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the present and future role of the State Mill and Elevator in the state and on the international agricultural scene, including an evaluation of current operations and the future revenue generating potential of the State Mill and Elevator; and

**BE IT FURTHER RESOLVED**, that the Legislative Council study available alternatives for the State Mill and Elevator, including the possibility of divestiture of the state's interest in the enterprise; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 10, 1995

**CHAPTER 694****SENATE CONCURRENT RESOLUTION NO. 4027**

(Senators G. Nelson, Freborg)

**PERSONAL COMPUTER USE BY STATE AGENCIES  
STUDY**

A concurrent resolution directing the Legislative Council to study the operation of and services provided by the Information Services Division, the use and proliferation of personal computers throughout state government, and the feasibility and desirability of contracting for data processing services.

**WHEREAS**, the Information Services Division was established in 1969 to design and implement data processing services for most state agencies; and

**WHEREAS**, technological changes over the last 25 years require a review of the Information Services Division, the role of the division in providing data processing services to state agencies, and whether there may be a more efficient and appropriate method of providing state agencies with the support needed to maintain and improve their use of computers; and

**WHEREAS**, the use of personal computers by state agencies has increased significantly in recent years; and

**WHEREAS**, technological advances in personal computers are continuing at a rapid pace and the effect of those advances on the customary practices of state agencies is not known; and

**WHEREAS**, the use of personal computers by state agencies may impact the role and operation of the Information Services Division and the coordination of computer services throughout state government;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the operation of and services provided by the Information Services Division, the use and proliferation of personal computers throughout state government, and the feasibility and desirability of contracting for data processing services; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 695****SENATE CONCURRENT RESOLUTION NO. 4029**

(Senator Freborg)

(Representatives Delzer, Grosz)

**FORT MANDAN DESIGNATED LEWIS AND CLARK  
BICENTENNIAL PROJECT**

A concurrent resolution designating Fort Mandan and its visitor center as North Dakota's official Lewis and Clark Bicentennial Project.

**WHEREAS**, the Lewis and Clark expedition spent from November 2, 1804, until April 7, 1805, in winter camp at Fort Mandan along the Missouri River west of present-day Washburn; and

**WHEREAS**, the winter spent at Fort Mandan was the longest time spent at any one site by the Lewis and Clark party during their entire 1804-1806 journey; and

**WHEREAS**, the bicentennial of the Lewis and Clark expedition will be observed during the years 2004 through 2006, with plans underway in many locales for celebrations, erection of monuments, construction of visitor centers, as well as other projects from St. Louis to the Pacific Ocean; and

**WHEREAS**, plans are underway at Fort Mandan for a major upgrading of the site, including construction of a new interpretive center, worthy of being the centerpiece of the Lewis and Clark Trail; and

**WHEREAS**, a statue is planned to commemorate the interaction between the members of the Lewis and Clark expedition and the Native Americans who resided near Fort Mandan at the time of the expedition; and

**WHEREAS**, designation of Fort Mandan and its visitor center as North Dakota's official Lewis and Clark Bicentennial Project would be a fitting contribution to the national observance of the bicentennial of the Lewis and Clark expedition which will be celebrated in the years 2004 through 2006;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly designates Fort Mandan and its visitor center as North Dakota's official Lewis and Clark Bicentennial Project.

Filed March 20, 1995

**CHAPTER 696****SENATE CONCURRENT RESOLUTION NO. 4030**

(Senators DeMers, Lee, Mushik)  
(Representatives Rydell, Svedjan, Wentz)

**ALZHEIMER'S PATIENT CARE STUDY**

A concurrent resolution directing the Legislative Council to study the continuum of care for North Dakotans with Alzheimer's and related dementias and the needs of caregivers and families of patients with Alzheimer's and related dementias.

**WHEREAS**, Alzheimer's and related dementias are the fourth leading cause of death in the United States; and

**WHEREAS**, based on census data, the estimated prevalence of Alzheimer's and related dementias in North Dakota for 1995 is 7,428 people, a number that is expected to increase to 7,756 people by the year 2000; and

**WHEREAS**, no prevalence estimates exist for the American Indian population; and

**WHEREAS**, the life expectancy of the population is increasing, the size of the oldest group is increasing most rapidly, and a higher incidence of Alzheimer's and related dementias is found in the oldest populations; and

**WHEREAS**, the needs of the population with Alzheimer's and related dementias differ from the needs of the typical nursing home population; and

**WHEREAS**, adult day care is undeveloped for the Alzheimer's and related dementia populations; and

**WHEREAS**, patients with Alzheimer's and related dementias and their families have special needs that are not being met in this state; and

**WHEREAS**, the state has put restrictions on the construction of new nursing home beds; and

**WHEREAS**, families of patients with Alzheimer's and related dementias believe these restrictions are a deterrent to establishing special care units for people with Alzheimer's and related dementias;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the continuum of care for North Dakotans with Alzheimer's and related dementias, including nursing home care, assisted living services, home and community-based services, and study the needs of the caregivers and families of patients with Alzheimer's and related dementias and the education of professionals and laypersons about Alzheimer's and related dementias; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

**Filed March 20, 1995**

**CHAPTER 697****SENATE CONCURRENT RESOLUTION NO. 4031**

(Senators Traynor, Langley, Streibel)  
(Representatives Johnson, Kunkel, Nicholas)

**DEVILS LAKE FLOOD EMERGENCY DECLARATION  
URGED**

A concurrent resolution urging the Governor to declare an emergency concerning the impending flood disaster in the Devils Lake basin and to recognize the impending flood disaster facing property owners adjacent to Devils Lake.

**WHEREAS**, the high precipitation experienced in the Devils Lake basin the past two years has caused millions of dollars in flood damage to roads, bridges, culverts, cropland, homes, businesses, and other public facilities in the Devils Lake basin; and

**WHEREAS**, most of the runoff from the 3,800-square-mile Devils Lake drainage basin ultimately finds its way into Devils Lake and has caused the lake to rise eight and one-half feet during the past 18 months; and

**WHEREAS**, the water level of Devils Lake has been on a general rise since 1940 reaching an elevation of 1430.9 mean sea level on January 1, 1995, a level almost three and one-half feet above flood stage, currently causing an estimated \$1.2 million in damage to roads, homes, cabins, agricultural land, and public facilities adjacent to the lake; and

**WHEREAS**, the State Engineer has forecast that, with normal spring runoff, Devils Lake may rise an additional one and one-half feet in 1995, causing flood damage in excess of \$10 million; and

**WHEREAS**, a \$30 million to \$40 million sport fishery of national acclaim has been developed at Devils Lake and will be seriously threatened if water elevation falls to around 1422 mean sea level as it did in early 1993; and

**WHEREAS**, economic losses of this magnitude due to either devastation of the Devils Lake sport fishery from low water levels or as a result of flooding from high runoff will have a significant negative effect on the entire region and the state; and

**WHEREAS**, research has shown that Devils Lake water levels can vary widely, with the lake sometimes going completely dry to times when the lake level exceeds an elevation of 1457 mean sea level, the overflow level into the Sheyenne River;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Governor to declare an emergency concerning the impending flood disaster in the Devils Lake basin and to recognize the impending flood disaster facing property owners adjacent to Devils Lake; and



**BE IT FURTHER RESOLVED**, that the Legislative Assembly supports all efforts to stabilize water levels at Devils Lake and urges the Governor to exercise any appropriate disaster relief measures under North Dakota Century Code Chapter 37-17.1; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, the State Engineer, and to each member of the State Water Commission.

Filed March 20, 1995

**CHAPTER 698****SENATE CONCURRENT RESOLUTION NO. 4032**

(Senators G. Nelson, Mushik)

**LIBRARY SYSTEM STUDY**

A concurrent resolution directing the Legislative Council to study the library system in North Dakota, including the role and mission of the state library, cooperative library ventures, and research and information systems to determine if the citizens of this state have access to essential library services that are delivered efficiently.

**WHEREAS**, the education of our children and the continuing education of our adults are dependent upon the quality of the libraries and the materials available to them; and

**WHEREAS**, the system of libraries developed over the years should be reviewed to determine if improvements and efficiencies can be achieved; and

**WHEREAS**, technological advancements on a statewide, national, and international level are redefining both the scope of and access to libraries and library materials;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the library system in North Dakota, including the role and mission of the state library, cooperative library ventures, and research and information systems such as ODIN, to determine if the citizens of this state have access to essential library services and whether improvements and efficiencies in the delivery of those services can be achieved; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 15, 1995

**CHAPTER 699****SENATE CONCURRENT RESOLUTION NO. 4033**

(Senators Wogsland, G. Nelson)  
(Representatives Dorso, Oban)

**WATER DEVELOPMENT STUDY**

A concurrent resolution directing the Legislative Council to study the financing and funding needs for development and completion of the state's water resources infrastructure and methods for development of a program to provide financing and funding of water supply facilities in this state.

**WHEREAS**, the Missouri River and Lake Sakakawea provide a vast water resource for the state; and

**WHEREAS**, in order to realize the potential benefits of this resource, a distribution system is necessary to distribute water to all portions of the state; and

**WHEREAS**, North Dakota also possesses significant ground water resources; and

**WHEREAS**, the surest way to guarantee a right to water resources is to put these water resources to a beneficial use; and

**WHEREAS**, many areas within the state do not have an adequate supply or adequate quality of water for multipurpose uses; and

**WHEREAS**, an adequate water supply for municipal, domestic, livestock, rural, irrigation, industrial, and other uses is essential for the social stability and economic security of the people of the state; and

**WHEREAS**, the Legislative Assembly has previously declared a state water resources policy, which provides in part that the public health, safety, and general welfare, including the enhancement of opportunities for social and economic growth and expansion of all of the people of the state, depend in large measure upon the optimum protection, management, and wise utilization of all of the water and related land resources of the state; and

**WHEREAS**, development of the water resources of the state is a capital investment for future generations of North Dakotans; and

**WHEREAS**, development of programs and projects to meet current and future water needs for the benefit of the citizens of the state is a matter of concern and high priority; and

**WHEREAS**, the state water resources policy also provides that adequate implementation of such plans and programs must be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities; and

**WHEREAS**, local water resource districts and joint water resource boards provide an existing effective method and structure through which required assurances for local cooperation, support, and cost-sharing may be provided; and

**WHEREAS**, state and local organizational structure, planning, and support are necessary ingredients to provide for the development of the state's water resources; and

**WHEREAS**, there is a need to establish a financing method to assist the citizens of the state in satisfying critical needs for water facilities and programs now and in the future; and

**WHEREAS**, many other states have established aggressive programs and have committed substantial funds for the development of their water resources for beneficial uses for their citizens; and

**WHEREAS**, the Legislative Assembly has established the resources trust fund to be used for the planning and construction of water supply facilities;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the financing and funding needs for development and completion of the state's water resources infrastructure and methods for development of a program to provide financing and funding of water supply facilities in this state; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 700****SENATE CONCURRENT RESOLUTION NO. 4034**

(Senators Wogsland, Langley, Streibel, Traynor)

(Representative Laughlin)

**DEVILS LAKE FLOOD EMERGENCY URGED**

A concurrent resolution urging the Governor to declare an emergency concerning the impending flood disaster in the Devils Lake basin and urging the Governor to mobilize the National Guard to combat the flood emergency developing in the Devils Lake basin.

**WHEREAS**, the high precipitation experienced in the Devils Lake basin the past two years has caused millions of dollars in flood damage to roads, bridges, culverts, cropland, homes, businesses, and other public facilities in the Devils Lake basin; and

**WHEREAS**, most of the runoff from the 3,800-square-mile Devils Lake drainage basin ultimately finds its way into Devils Lake and has caused the lake to rise eight and one-half feet during the past 18 months; and

**WHEREAS**, the water level of Devils Lake has been on a general rise since 1940 reaching an elevation of 1430.9 mean sea level on January 1, 1995, a level almost three and one-half feet above flood stage currently causing an estimated \$1.2 million in damage to roads, homes, cabins, agricultural land, and public facilities adjacent to the lake; and

**WHEREAS**, the State Engineer has forecast that, with normal spring runoff, Devils Lake may rise an additional one and one-half feet in 1995 causing flood damage in excess of \$10 million; and

**WHEREAS**, research has shown that Devils Lake water levels can vary widely with the lake sometimes going completely dry to times when the lake level exceeds an elevation of 1457 mean sea level, the overflow level into the Sheyenne River;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Governor to declare an emergency concerning the impending flood disaster in the Devils Lake basin and to mobilize the National Guard to combat the flood emergency developing in the Devils Lake basin; and

**BE IT FURTHER RESOLVED**, that upon mobilization the National Guard construct a canal or other appropriate feature from Devils Lake to the Stump Lake system and from the Stump Lake system to the Sheyenne River to alleviate flooding in the Devils Lake basin; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, the Adjutant General, the State Engineer, and to each member of the State Water Commission.

Filed March 28, 1995

## CHAPTER 701

## SENATE CONCURRENT RESOLUTION NO. 4039

(Senators Mushik, Krauter)  
(Representatives Jacobs, Kerzman)

## LARRY WOIWODE DESIGNATED POET LAUREATE

A concurrent resolution designating Larry Woiwode as Poet Laureate of North Dakota.

WHEREAS, Corbin A. Waldron was designated as Poet Laureate of the State of North Dakota by the Thirty-fifth Legislative Assembly and served with honor and distinction in that capacity until his death in April 1978; and

WHEREAS, Henry R. Martinson and Lydia O. Jackson were designated Associate Poet Laureates of the State of North Dakota by the Forty-fourth Legislative Assembly; and

WHEREAS, Henry R. Martinson, who honorably served this state through his contributions to the political and economic life of North Dakota and through his service as Deputy Commissioner of Labor for many years, died in November 1981; and

WHEREAS, Lydia O. Jackson, who was a teacher, wife, and mother, highly respected and beloved poet, lifelong resident of Walsh County, and was designated as Poet Laureate of the State of North Dakota by the Forty-sixth Legislative Assembly and served with honor and distinction in that capacity until her death in April 1984; and

WHEREAS, Larry Woiwode, who was born in 1942 in North Dakota and lived in Sykeston until the age of eight when his family moved to Illinois, began writing poetry as a high school student and had some of those early poems chosen for inclusion in the National Anthology of High School Poetry, published by the National Poetry Association; and

WHEREAS, Larry Woiwode, who was educated at the University of Illinois at Urbana, twice received the Leah Trelease Memorial Award from the University of Illinois: first, for poems, and second, for a verse play, Midnight; and

WHEREAS, Larry Woiwode continued his writing career in New York City, became a college professor, served as director of the Creative Writing Program at the State University of New York-Binghamton, Writer in Residence at the University of Wisconsin-Madison, conducted writing seminars and workshops across the United States, and returned to his home state in 1978 with his wife, Carole, and their four children to operate a farm and ranch near Mott, where he continues to write; and

WHEREAS, Larry Woiwode has published the novels Beyond the Bedroom Wall, Poppa John, Born Brothers, Indian Affairs, and What I'm Going to Do, I Think; two collections of short fiction, The Neumiller Stories and Silent Passengers; a biblical commentary, Acts; and two books of poetry, Even Tide and Poetry North: Five Poets of North Dakota; and

**WHEREAS**, Larry Woiwode's poetry and fiction has been published in Antaeus, Atlantic, Harper's, The New Yorker, Partisan Review, Transatlantic Review, New York Times, and many other publications; his poems have been anthologized in texts such as Here and Now, II, Western Wind: An Introduction to Poetry (1st edition), North Dakota's Literary Heritage, and A Galaxy of Verse; and

**WHEREAS**, Larry Woiwode's books have received the William Faulkner Foundation Award, the Friends of American Writers Award, Cornerstone Best Book of the Year, and the LSU/Southern Review award for short fiction, and his book, Beyond the Bedroom Wall, which is set in North Dakota, was a nominee for both the National Book Award and the National Book Critic's Circle Award; and

**WHEREAS**, Larry Woiwode has been a Fellow of the McDowell Colony, a Fellow of the John Simon Guggenheim Memorial Foundation (1971-72), during the tenure of which his poems were published in The Atlantic, The New Yorker, and Sumac; was awarded the John Dos Passos Award for a distinguished body of work, including poetry, in 1991, and was the recipient of an award in literature from the American Academy and Institute of Arts and Letters; is listed in Who's Who International, Contemporary Authors: Dictionary of Literary Biography, Current Biography, The Harper Handbook to Literature, Contemporary Literary Criticism, and The Directory of American Poets and Fiction Writers; and

**WHEREAS**, Larry Woiwode served on the executive board of Poets, Essayists, and Novelists (PEN) in the 1970s, has been a member of Poets and Writers since 1971, and the Chrysostom Society since 1988; and

**WHEREAS**, Larry Woiwode has been recognized by the citizens of North Dakota for his talent and accomplishments as a writer and for his outstanding contributions to the State of North Dakota as a native son who interprets the culture, landscape, and people of this state to the world through his poetry and fiction, with the award of an honorary Doctor of Letters from North Dakota State University (1977) and initiation into the Roughrider Hall of Fame, North Dakota's highest honor (1992), at which time Governor George Sinner read Larry Woiwode's best known poem, "Crystals from North Dakota";

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That Larry Woiwode of rural Mott, North Dakota, is designated and shall serve as Poet Laureate of North Dakota until a successor is named by the Legislative Assembly; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to Larry Woiwode.

Filed March 15, 1995



**CHAPTER 702****SENATE CONCURRENT RESOLUTION NO. 4040**

(Senators Tomac, Freborg, Mushik, Yockim)

(Representatives Coats, Freier)

**MISSOURI RIVER MASTER MANUAL REVISION**

A concurrent resolution urging the United States Army Corps of Engineers to include provisions for the protection of recreation, municipal, industrial, irrigation, and other interests on the Missouri River in North Dakota in developing a revised master manual for the future operation of the Pick-Sloan project.

**WHEREAS**, the Flood Control Act of 1944, as amended, assured benefits to all ten states within the Missouri River basin under a control and management program that came to be commonly known as the Pick-Sloan project; and

**WHEREAS**, the Congress of the United States has directed the United States Army Corps of Engineers to build, operate, and maintain all the features of the Pick-Sloan project; and

**WHEREAS**, the Pick-Sloan project provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in states lying upstream from these states, and by channelizing the Missouri River from Sioux City, Iowa to St. Louis, Missouri at federal expense; and

**WHEREAS**, the Pick-Sloan project reservoirs have been in place for many years, thus providing the downstream states in the Missouri River basin all of the benefits promised in the Pick-Sloan project; and

**WHEREAS**, construction of facilities under the Pick-Sloan project has, to date, resulted in \$4.9 billion of flood protection to downstream interests and has allowed these downstream interests to develop the original floodplain of the Missouri River for industrial, municipal, and agricultural uses; and

**WHEREAS**, under the Pick-Sloan project, North Dakota has sacrificed over 550,000 acres of land, which has meant the permanent loss of 2,641 jobs, \$45 million of annual personal income, and \$131 million of annual gross business volume; and

**WHEREAS**, the United States Army Corps of Engineers is now in the process of revising its master manual for the operation of the entire Pick-Sloan project in future years; and

**WHEREAS**, the construction of the Pick-Sloan project has divided the Missouri River in North Dakota into four distinct regions, namely, the Missouri River reach above Williston, Lake Sakakawea, the Missouri River reach from Garrison Dam to the headwaters of Lake Oahe, and Lake Oahe; and

**WHEREAS**, as the recreation industry on the Missouri River mainstem in North Dakota, which has developed into a \$67 million per year industry, suffered

severely when the United States Army Corps of Engineers allowed lake levels to drop drastically during the drought of the late 1980s and the early 1990s; and

**WHEREAS**, the United States Army Corps of Engineers, in its new proposed operation plan called the Missouri River Master Manual Preferred Alternative, is planning to allow Lake Sakakawea to drop to 1,775 feet msl and Lake Oahe to 1,540 feet msl, in future drought years, thereby again severely damaging the recreation industry; and

**WHEREAS**, the river banks in the Garrison Dam to Oahe Reservoir reach consist of ancient floodplain deposits that have been and will be severely eroded with great loss of valuable land whenever high water flows are released from Garrison Dam; and

**WHEREAS**, the irrigators, fishermen, boaters, industrial and municipal water intakes, dredged channels, and marinas have all utilized the moderate summer river levels of the Garrison to Oahe reach both before and after the construction of the Garrison Dam; and

**WHEREAS**, the United States Army Corps of Engineers in its proposed master manual is proposing high spring releases every third year and these releases will cause severe bank erosion and loss of much valuable land; and

**WHEREAS**, the United States Army Corps of Engineers is also proposing very low water releases during the summer to allow endangered shore birds to nest which will seriously affect many irrigators, recreation users, water intakes, dredged channels, and marinas;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly requests the United States Army Corps of Engineers to respect the large sacrifice North Dakota has made so the Pick-Sloan project could be built; and

**BE IT FURTHER RESOLVED**, that the United States Army Corps of Engineers, in its new master manual, provide for Lake Sakakawea minimum levels of at least 1,802 feet msl, and Lake Oahe levels of at least 1,569 feet msl, so that North Dakota's flourishing recreation industry may continue to operate; and

**BE IT FURTHER RESOLVED**, that the United States Army Corps of Engineers, in its master manual, carefully examine the proposed high and very high spring water releases on the free flowing reaches of the Missouri River, and minimize impacts to the unnecessary loss of valuable land and the increase in flood damages; and

**BE IT FURTHER RESOLVED**, that the United States Army Corps of Engineers, in its master manual, continue the moderate summer "irrigation and recreation releases" that have been highly satisfactory to the river users of this reach; and

**BE IT FURTHER RESOLVED**, that the United States Army Corps of Engineers more evenly balance the needs of endangered species in the upper Missouri River basin with the requirements for water supply and recreation, and flood control in the free flowing stretches of the Missouri River; and

**BE IT FURTHER RESOLVED**, that Governor Schafer, Senator Conrad, Senator Dorgan, Representative Pomeroy, the state engineer and staff, director of the Game and Fish Department and staff, and many others be commended for their efforts to date and are urged to continue to work diligently at the local and national levels to influence the United States Army Corps of Engineers to adopt a master manual for the future operation of the Missouri River that is acceptable to all areas of the Missouri River in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Division Commander of the Missouri River Division of the United States Army Corps of Engineers in order to be part of the public record for the Missouri River Master Manual Draft Environmental Impact Statement; the Secretary of the Army; the Secretary of the Interior; the District Engineer, Omaha District, United States Army Corps of Engineers; the Governor, each member of the State Water Commission; and each member of the North Dakota, South Dakota, Wyoming, and Montana Congressional Delegations.

Filed March 20, 1995

**CHAPTER 703****SENATE CONCURRENT RESOLUTION NO. 4041**

(Senators Tomac, Freborg, Mushik, Yockim)  
(Representatives Coats, Freier)

**MISSOURI RIVER BANK PROTECTION**

A concurrent resolution urging the Congress of the United States and the United States Army Corps of Engineers to assume responsibility for Missouri River bank erosion downstream from all Pick-Sloan project dams, including the Garrison Dam to Oahe Reservoir reach in North Dakota, and to continue a program of annually appropriating funds for the maintenance and construction of bank protection projects.

**WHEREAS**, the Flood Control Act of 1944, as amended, assured benefits to all ten states within the Missouri River basin under a control and management program that came to be commonly known as the Pick-Sloan project; and

**WHEREAS**, the Congress of the United States has directed the United States Army Corps of Engineers to build, operate, and maintain all the features of the Pick-Sloan project; and

**WHEREAS**, the Pick-Sloan project provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for states lying below Sioux City, Iowa, through construction of large reservoirs in states lying above that point, and by channelizing the Missouri River from Sioux City, Iowa to St. Louis, Missouri, at federal expense; and

**WHEREAS**, the Pick-Sloan project reservoirs have been in place for many years, thus providing the downstream states in the Missouri River basin all of the benefits promised in the Pick-Sloan project; and

**WHEREAS**, construction of facilities under the Pick-Sloan project has, to date, resulted in \$4.9 billion of flood protection to downstream interests and has allowed these downstream interests to develop the original floodplain of the Missouri River for industrial, municipal, and agricultural uses; and

**WHEREAS**, the United States Army Corps of Engineers has stabilized and continues to maintain the entire channel of the Missouri River from Sioux City, Iowa to St. Louis, Missouri, all at federal expense; and

**WHEREAS**, under the Pick-Sloan project, North Dakota has sacrificed over 550,000 acres of land, which has meant the permanent loss of 2,641 jobs, \$45 million of annual personal income, and \$131 million of annual gross business volume; and

**WHEREAS**, almost two-thirds of the inexpensive hydroelectric power generated by Garrison Dam in North Dakota which was built pursuant to the Pick-Sloan project is used in states other than North Dakota; and

**WHEREAS**, the United States Army Corps of Engineers stated in its final report to Congress dated December 1981 concerning the Missouri River streambank erosion that "bank erosion in this reach results in a permanent net loss of high value

lands. This process, unless halted, would eventually transform the present river into a wide area of sandbars and channels, occupying an increasing proportion of the valley width between the bluffs"; and

**WHEREAS**, the lands adjacent to the Missouri River have been and will continue to be seriously eroded and permanently lost to the local landowners and the state of North Dakota because of reservoir management that releases highly fluctuating amounts of clear water capable of eroding and transporting large amounts of soil; and

**WHEREAS**, soil eroded from the banks of the Missouri River is being deposited as a delta in the headwaters of the Oahe Reservoir and Lake Sakakawea thereby causing the watertable to rise under the adjacent land, and is increasing the frequency and severity of ice jam hazards and has, according to recent United States Army Corps of Engineers pronouncements, endangered 6,000 acres of land containing 40 homes and valuable farmland around Lake Oahe, and in the headwaters area of Lake Sakakawea, the delta is endangering the Buford-Trenton irrigation district, is endangering the water intake for the city of Williston, and many acres of valuable farmland; and

**WHEREAS**, a similar bank erosion problem exists for a 58-mile reach on the South Dakota-Nebraska border downstream from the Gavins Point Dam and also between Fort Peck Dam in Montana and Lake Sakakawea; and

**WHEREAS**, destructive bank erosion continues when high winter water releases for power generation occur; and

**WHEREAS**, Section 33 of the Water Resource Development Act of 1988 amended the Flood Control Act of 1944 and directed the Secretary of the Army to undertake measures that the Secretary of the Army determines are needed to alleviate bank erosion and related problems associated with reservoir releases along the Missouri River between Fort Peck Dam in Montana and a point 58 miles downstream of the Gavins Point Dam on the South Dakota-Nebraska border; and

**WHEREAS**, at the request of Congress, a 1988 General Accounting Office study agreed that since the closure of the Garrison Dam accretion no longer occurs and a net loss of land results and the study also identified one option of funding bank stabilization projects as allocating these costs, whether economically justifiable or not, to Pick-Sloan Project purposes; and

**WHEREAS**, Congress appropriated \$1.5 million in fiscal year 1992 and \$1.5 million in fiscal year 1993 for the purpose of protecting the banks of the Missouri River; and

**WHEREAS**, the United States Army Corps of Engineers has not used any of these funds, except for maintenance of existing bank protection projects, and insists that new protection projects cannot be constructed unless a benefit cost ratio greater than one exists which is contrary to the language and intent of Section 33 of the Water Resource Development Act of 1988 and contrary to the funding criteria of many other projects the United States Army Corps of Engineers has found necessary as a completion of the Pick-Sloan project;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Congress of the United States to assume responsibility for the protection of lands endangered below all Pick-Sloan project dams by the operation of the Pick-Sloan project; and

**BE IT FURTHER RESOLVED**, that Congress is urged to continue a program of annually appropriating funds to repair existing bank protection projects now in danger of failure and to begin to construct bank protection projects in the most critical locations; and

**BE IT FURTHER RESOLVED**, that Senator Kent Conrad, Senator Byron Dorgan, and Congressman Earl Pomeroy are urged to work diligently with the Senators and Congressmen of the states of Montana, South Dakota, and Nebraska to secure appropriations of these necessary funds; and

**BE IT FURTHER RESOLVED**, that funding for this project not be a normal federal water project appropriation, but rather be charged to the construction and maintenance of the Pick-Sloan project; and

**BE IT FURTHER RESOLVED**, that the United States Army Corps of Engineers be urged to initiate a program to construct bank protection structures along the Missouri River between Fort Peck and a point 58 miles downstream of Gavins Point Dam, as directed by Section 33 of the Water Resource Development Act of 1988; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the Army; Secretary of the Interior; District Engineer, Omaha District, United States Army Corps of Engineers; the Governor; each member of the North Dakota State Water Commission; and each member of the North Dakota, South Dakota, Nebraska, and Montana Congressional Delegations.

Filed March 16, 1995

**CHAPTER 704****SENATE CONCURRENT RESOLUTION NO. 4043**

(Senators Tennesos, G. Nelson, Redlin)  
(Representatives Dorso, Gorman)

**INDIAN CASINO GAMING ISSUES ADDRESSED**

A concurrent resolution urging the North Dakota Congressional Delegation to address issues related to Indian casino gaming.

**WHEREAS**, Indian gaming is authorized by the federal Indian Gaming Regulatory Act of 1988; and

**WHEREAS**, one of the purposes of the federal Indian Gaming Regulatory Act of 1988 is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

**WHEREAS**, in compliance with the Indian Gaming Regulatory Act of 1988, the state has executed five tribal-state compacts with the tribes of this state; and

**WHEREAS**, the state is facing complex legal, social, and economic challenges with the appearance of casino gaming and other high-stakes gaming on Indian lands in the state; and

**WHEREAS**, the Legislative Assembly is uncertain about the future of Indian gaming and its possible expansion in the state; and

**WHEREAS**, the Legislative Assembly believes the federal government has the broad responsibility to ensure that Indian gaming activities within the state are in the best interests of both the state and the Indian tribes;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the North Dakota Congressional Delegation to address the complex legal issues related to the federal Indian Gaming Regulatory Act of 1988, including the positive and negative impacts of Indian gaming on the state and tribes; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to each member of the North Dakota Congressional Delegation, the Majority and Minority leaders of the United States House of Representatives and the United States Senate, and all Tribal Chairmen in North Dakota.

Filed March 28, 1995

**CHAPTER 705****SENATE CONCURRENT RESOLUTION NO. 4044**

(Senators Tallackson, Robinson)  
(Representatives Hagle, Gerntholz, Martin)

**POWER MARKETING ADMINISTRATIONS SALE  
OPPOSED**

A concurrent resolution urging the President and the Congress to reject any proposal to sell any of the power marketing administrations or otherwise dispose of their assets.

**WHEREAS**, the Western Area Power Administration is one of five power marketing administrations that markets hydroelectric power from dams along the Missouri River and other river systems in the western United States; and

**WHEREAS**, hydroelectric power produced by the power marketing administrations is a key component of supplying electricity for North Dakota's rural electric cooperatives, municipal utilities, state institutions, and federal installations located in North Dakota; and

**WHEREAS**, hydroelectric power is marketed to these customers at cost-base rates that fully repay the federal government's cost of investment as well as interest, operation, and maintenance expenses; and

**WHEREAS**, hydroelectric power helps North Dakota's farmers, ranchers, small businesses, cities, and state institutions to keep expenses for electricity lower than they otherwise might be; and

**WHEREAS**, proposals brought forth at the federal level have suggested that sale of the power marketing administrations is one method to raise funds to reduce the federal deficit; and

**WHEREAS**, these proposals are receiving serious consideration by the Administration and the Congress; and

**WHEREAS**, the sale of hydropower assets would threaten consumer-owned utilities, state institutions, and federal installations with uncertainty of supply and significantly increase wholesale power costs; and

**WHEREAS**, any sale would undermine the economic stability of the state's consumer-owned utility customers, state institutions, and federal installations located in this state; and

**WHEREAS**, any sale would renege on the existing multiuse concept of the Pick-Sloan plan for the Missouri River basin; and

**WHEREAS**, any sale would impede the efficient operation of federal multipurpose water projects that provide flood control protection and water for irrigation, domestic use, and recreation purposes; and



**WHEREAS**, the Legislative Assembly is strongly opposed to the sale, transfer, exchange, lease, or other disposition of federal power marketing administrations or the power plants or related facilities used for the production and transmission of electricity;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the President and the Congress of the United States to reject any proposal to sell any of the power marketing administrations or otherwise dispose of their assets; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President, the Majority and Minority Leaders of the United States Senate and House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed March 16, 1995

**CHAPTER 706****SENATE CONCURRENT RESOLUTION NO. 4045**

(Senators Wogsland, Kelsh, Tomac)  
(Representative Sitz)

**BLACKBIRD DEPREDAATION STUDY**

A concurrent resolution directing the Legislative Council to study the effects of blackbirds on agricultural crop production, the level of depredation in the state, and the short-term and long-term effects of continued depredation on the species, the environment, and rural North Dakota in general.

**WHEREAS**, the ownership of and title to all wildlife in the state is statutorily placed with the state; and

**WHEREAS**, "wildlife" includes any migratory, nonmigratory, or endangered bird and therefore includes a blackbird; and

**WHEREAS**, a blackbird is defined as a harmful wild bird; and

**WHEREAS**, it is statutorily permitted to kill any harmful wild bird in this state during daylight hours;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the effects of blackbirds on agricultural crop production, the level of blackbird depredation in the state, and the short-term and long-term effects of continued blackbird depredation on the species, the environment, and rural North Dakota in general; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 707****SENATE CONCURRENT RESOLUTION NO. 4046**

(Senators Watne, LaFountain)

**GAMBLING ADDICTION SERVICES STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing, in cooperation with tribal governments, gambling addiction treatment and counseling services to state residents.

**WHEREAS**, a survey conducted by the Department of Human Services indicated that at least 4,500 adults in the state are experiencing moderate to severe problems related to their gambling; and

**WHEREAS**, a survey conducted by the Department of Human Services indicated that 12.3 percent of adult American Indians may be experiencing moderate to severe problems related to their gambling; and

**WHEREAS**, North Dakota is experiencing a shortage of gambling addiction counselors; and

**WHEREAS**, a question exists regarding appropriate guidelines for the provision of gambling addiction services; and

**WHEREAS**, there is a question as to whether gambling addiction treatment is a state responsibility; and

**WHEREAS**, a portion of gaming proceeds could be committed to the training of gambling addiction counselors and for providing gambling addiction treatment and counseling; and

**WHEREAS**, the North Dakota Council on Compulsive Gambling, whose purposes are education, research, crisis prevention, and rehabilitation in connection with gambling problems, may be a vehicle for providing assistance and guidance in the implementation of gambling addiction services;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of providing, in cooperation with tribal governments, gambling addiction treatment and counseling services to state residents; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 10, 1995

**CHAPTER 708****SENATE CONCURRENT RESOLUTION NO. 4047**

(Senators Holmberg, Grindberg, C. Nelson)

**REFUGEE RESETTLEMENT EFFECTS STUDY**

A concurrent resolution directing the Legislative Council to study refugee resettlements in the state and define and identify the net fiscal effects of refugees and other limited English proficient or language minority students on school districts and the providers of social services.

**WHEREAS**, various social service groups are involved in the resettlement of refugees in North Dakota and these resettlements may require the funding of social services by the federal government and other entities; and

**WHEREAS**, federal regulations result in most refugee resettlements taking place in the state's larger cities; and

**WHEREAS**, refugees resettled in the state may require social services funded by the federal government and other entities; and

**WHEREAS**, the children of refugees resettled in the state are placed in local schools, where they may require special language services; and

**WHEREAS**, even though refugee children may require special services, they usually are not designated as special needs children; and

**WHEREAS**, although school districts attended by the children of refugees may receive some federal grants, they do not receive sufficient additional support for the services they must provide; and

**WHEREAS**, school districts are attended by language minority students with limited English proficiency who require special language services; and

**WHEREAS**, refugees also bring skills, abilities, and economic contributions to their new communities by filling employment needs in those communities; and

**WHEREAS**, refugees quickly become taxpayers and consumers;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study refugee resettlements in the state and define and identify the net fiscal effects of refugees and other limited English proficient or language minority students on school districts and the providers of social services; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 709****SENATE CONCURRENT RESOLUTION NO. 4048**

(Senators Nething, Redlin)

**TELECOMMUNICATIONS TAX POLICY STUDY**

A concurrent resolution directing the Legislative Council to study the implications of North Dakota tax policy on the telecommunications industry and to determine the need for tax reform in the telecommunications industry.

**WHEREAS**, telecommunications companies are assessed by the State Board of Equalization as public utilities; and

**WHEREAS**, changing technology and regulation in the telecommunications industry is making the current tax treatment of telecommunications companies obsolete in many states; and

**WHEREAS**, increasing competition in the telecommunications industry may warrant that telecommunications firms be taxed in the same manner as other businesses; and

**WHEREAS**, taxes on telecommunications companies may affect decisions of telecommunications consumers and investors and may influence the location of companies and industries;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the implications of North Dakota tax policy on the telecommunications industry and determine the need for tax reform in the telecommunications industry; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 15, 1995

**CHAPTER 710****SENATE CONCURRENT RESOLUTION NO. 4049**

(Senators Tomac, W. Stenehjem)  
(Representatives Boehm, Svedjan)

**CHILD SUPPORT STUDY**

A concurrent resolution directing the Legislative Council to study issues relating to child support.

**WHEREAS**, federal law requires states to establish, by legislative, judicial, or administrative action, guidelines for child support awards; and

**WHEREAS**, North Dakota law provides that the Department of Human Services is responsible for adopting guidelines for child support awards; and

**WHEREAS**, federal regulations require a periodic review of child support guidelines; and

**WHEREAS**, the Department of Human Services has adopted new child support guidelines that were effective January 1, 1995; and

**WHEREAS**, concerns have been expressed that there are inequities in the guidelines; and

**WHEREAS**, there may be alternatives that could improve the cost effectiveness and efficiency of the Department of Human Services child support collection system; and

**WHEREAS**, child support issues often involve multiple families and multiple support obligations;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study issues relating to child support, including the guidelines that became effective January 1, 1995, methods to improve the cost effectiveness and efficiency of the Department of Human Services child support collection system, and the actual costs of raising children; and analyze case data on the application of, and deviations from, the guidelines to ensure that deviations from the guidelines are limited; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 10, 1995

**CHAPTER 711****SENATE CONCURRENT RESOLUTION NO. 4050**

(Senator Nething)

**TOURISM, ARTS, AND HISTORICAL SOCIETY STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing measures to facilitate and encourage the Tourism Department, the Council on the Arts, and the State Historical Society of North Dakota to work together and to develop jointly new and innovative products.

**WHEREAS**, the Tourism Department is designed to foster and promote tourism to, and within, this state and full development of the state's tourism resources, and to serve as a planning and coordinating agency for tourism-related programs of this state and the state's political subdivisions; and

**WHEREAS**, the Council on the Arts is designed to promote theater, music, opera, dance, fine and performing arts, fairs, festivals, and the preservation of folk arts; and

**WHEREAS**, the State Historical Society of North Dakota is designed to hold the present and future historical collections and property for the state; and

**WHEREAS**, some aspects of the missions of the Tourism Department, the Council on the Arts, and the State Historical Society of North Dakota are similar and the three agencies may complement one another and may develop new and innovative products by working together cooperatively and jointly; and

**WHEREAS**, there may be a more efficient and effective use of public funds if a mechanism is found to encourage the three agencies to work together to develop joint products, but care must be taken to ensure that the separate funding sources of the three agencies are protected;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of implementing measures to facilitate and encourage the Tourism Department, the Council on the Arts, and the State Historical Society of North Dakota to work together and to develop jointly new and innovative products; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 712****SENATE CONCURRENT RESOLUTION NO. 4051**

(Senator Tennesfos)

**IRRIGATED AGRICULTURAL LAND ASSESSMENT  
STUDY**

A concurrent resolution directing the Legislative Council to study property tax assessment for irrigated and nonirrigated agricultural land.

**WHEREAS**, the valuation of agricultural land for ad valorem property tax assessment is based on the agricultural productivity of each county; and

**WHEREAS**, irrigation increases the production of agricultural products in a county which increases the average agricultural property valuation for the entire county; and

**WHEREAS**, when land that is irrigated has valuation equal to valuation of similar nonirrigated land, a perception of assessment inequality exists because of the differences in agricultural production; and

**WHEREAS**, when land that is irrigated has valuation that is higher than the valuation of similar nonirrigated land, a perception of assessment inequality exists because the only difference is the presence of an exempt well and irrigation equipment;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study property tax assessment for irrigated and nonirrigated agricultural land, with emphasis on determining an equitable means of valuation for irrigated land and nonirrigated land that is capable of being irrigated; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 15, 1995



**CHAPTER 713****SENATE CONCURRENT RESOLUTION NO. 4052**  
(Appropriations Committee)**HIGHER EDUCATION CONSTRUCTION STUDY**

A concurrent resolution directing the Legislative Council to study the capital repair, maintenance, and construction requirements of institutions under the State Board of Higher Education.

**WHEREAS**, the physical plant facilities are aging at the institutions under the State Board of Higher Education; and

**WHEREAS**, during the 1993-95 biennium the State Board of Higher Education directed all University System campuses to complete facility master plans, including an analysis of facility repairs and maintenance requirements; and

**WHEREAS**, the physical plant valuation of the University System campuses exceeds \$700 million; and

**WHEREAS**, it is necessary to repair facilities for compliance with health and safety requirements; and

**WHEREAS**, the Americans with Disabilities Act requires significant renovations of campus facilities; and

**WHEREAS**, campus facilities should be technologically accessible; and

**WHEREAS**, the Legislative Assembly should periodically review the condition of physical facilities of the University System campuses;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the capital repair, maintenance, and construction requirements of the institutions under the State Board of Higher Education and methods of financing; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 714****SENATE CONCURRENT RESOLUTION NO. 4053**

(Senators Naaden, Streibel, Urlacher)

(Representatives Freier, Kretschmar)

**WATER LAWS STUDY**

A concurrent resolution directing the Legislative Council to study the state's water laws concerning their effect on the efficient use of water and their effect on the holders of senior water rights.

**WHEREAS**, North Dakota has adopted the doctrine of prior appropriation for the acquisition of water rights in this state; and

**WHEREAS**, under this doctrine, the person that is the first in time to appropriate water is the first to acquire a right to that water; and

**WHEREAS**, North Dakota is an arid state and one of the goals of the prior appropriation doctrine is to put a scarce resource such as water to the most beneficial use possible; and

**WHEREAS**, in order to prevent waste and to foster and promote the efficient use of scarce resources, North Dakota law provides that a senior right to appropriate water does not include the right to prevent changes in the condition of water occurrence or to prevent a later appropriator from lowering a water table, artesian pressure, or water level if the senior appropriator can reasonably acquire water under the changed conditions; and

**WHEREAS**, under this law the holder of a senior water right can be required to incur expenses to enable the senior user to capture the water to which that person has a senior right;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the state's water laws concerning their effect on the efficient use of water and their effect on the holders of senior water rights; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 20, 1995

**CHAPTER 715****SENATE CONCURRENT RESOLUTION NO. 4055**

(Senator W. Stenehjem)  
(Representative Delmore)

**CHILD SUPPORT ADMINISTRATIVE PROCESS STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing an administrative process for the enforcement of child support obligations.

**WHEREAS**, approximately one-third of the states have adopted administrative procedures for the enforcement of child support obligations; and

**WHEREAS**, an administrative enforcement process is viewed as a viable alternative to traditional judicial processes in light of cost effectiveness and the steadily increasing volume of child support cases; and

**WHEREAS**, as a percentage of court filings and related workload child support proceedings have steadily increased in North Dakota from 39 percent in 1989 to nearly 48 percent in 1993;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of establishing an administrative process for the enforcement of child support obligations; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 716****SENATE CONCURRENT RESOLUTION NO. 4056**

(Senators Streibel, Heitkamp, Redlin, Tallackson, Traynor,  
Urlacher)

**WETLANDS LAWS STUDY**

A concurrent resolution directing the Legislative Council to study North Dakota's wetlands laws.

**WHEREAS**, North Dakota is located in the center of the prairie pothole region, containing most of the remaining wetlands in the prairie pothole region of the United States; and

**WHEREAS**, the Legislative Assembly finds that extensive acres of land in North Dakota are covered by easements held by the United States Fish and Wildlife Service for which farmers have been paid to not drain, fill, or burn these wetlands; and

**WHEREAS**, the Legislative Assembly declares that a policy must be developed concerning the amount of wetlands that exist in North Dakota, the amount of wetlands under federal or state government ownership, the location of North Dakota's remaining wetlands, the amount of wetlands that should be preserved in public or private ownership in North Dakota, the manner in which wetlands should be preserved if additional wetlands need to be preserved, the number of waterfowl that North Dakota produces each year, the agricultural benefits that are foreclosed if wetlands are not drained, the cost to farmers of not draining their wetlands, the impact of wetlands on water resource development in North Dakota, and other related issues; and

**WHEREAS**, the swampbuster provisions of the federal farm bill, Section 404 of the Clean Water Act, and federal wetlands definitions are under review and may be changed during the next session of the United States Congress; and

**WHEREAS**, proposed changes to North Dakota wetlands laws may be impacted or modified pending the result of proposed changes to federal wetlands laws;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council is hereby directed and authorized to study wetlands laws in North Dakota and all of the issues related thereto; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 717****SENATE CONCURRENT RESOLUTION NO. 4057**

(Senator Bowman)

(Representatives Drovdal, Kempenich)

(Approved by the Delayed Bills Committee)

**GRASSLANDS MANAGEMENT POLICY URGED**

A concurrent resolution urging the United States Secretary of Agriculture to consider North Dakota's cooperative grazing associations as models for successful federal land use and to create a separate entity for the management of grasslands.

**WHEREAS**, the national grasslands in North Dakota extend over 1.2 million acres and support approximately 550 ranch families who belong to six cooperative grazing associations; and

**WHEREAS**, farming and ranching in the national grasslands contribute \$24.3 million directly to the local economies and another \$50.5 million indirectly; and

**WHEREAS**, the Bankhead-Jones Farm Tenant Act was enacted to promote the utilization and conservation of the national grasslands and to provide for the security of the families who live and work in the national grasslands; and

**WHEREAS**, the cooperative grazing associations were formed in the late 1930s to implement the goals of the federal legislation; and

**WHEREAS**, the family members of the cooperative grazing associations graze an average of 155 animal units for six months each year; and

**WHEREAS**, these national grasslands operate under a different legislative authority with a distinctly different purpose from national forests; and

**WHEREAS**, virtually all of the rangeland in North Dakota's national grasslands is in good condition and demonstrative of the fact that rangeland improvement and livestock management complement each other; and

**WHEREAS**, unwise and unjust regulations that lack sound scientific bases must be curtailed;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the United States Secretary of Agriculture to recognize the use and achievements of North Dakota's cooperative grazing associations and to set forth the use and achievements as models for successful federal land use; and

**BE IT FURTHER RESOLVED**, that the Secretary of Agriculture and Congress are urged to establish a separate entity within the United States Department of Agriculture which has staff experienced in grassland management to manage grasslands in an administrative region consisting of North Dakota, South

Dakota, Wyoming, Nebraska, Colorado, California, Idaho, Kansas, Oklahoma, Oregon, and Texas; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the United States Secretary of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed March 24, 1995

**CHAPTER 718****SENATE CONCURRENT RESOLUTION NO. 4058**

(Senators Nalewaja, Mushik, St. Aubyn)  
(Representatives Boucher, Gunter, Svedjan)

**MENTAL HEALTH SERVICES STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing out-of-home mental health services to severely emotionally disabled children without requiring the relinquishment of custody by parents.

**WHEREAS**, parents of severely emotionally disabled persons age 22 and younger often require access to public funds in order to provide out-of-home mental health services; and

**WHEREAS**, out-of-home mental health services are provided in an equal manner regarding residence of families, unrealistic time lines, and requirements of court action to receive services; and

**WHEREAS**, it has been documented that the need for state-appropriated funds underlies all identified solutions to this problem and the Fifty-fourth Legislative Assembly was unable to provide adequate funding to begin to address the identified solutions; and

**WHEREAS**, in order to obtain funds for out-of-home mental health services parents may be required to relinquish custody in favor of foster care; and

**WHEREAS**, if funds were appropriated to the Division of Mental Health for the provision of out-of-home mental health services parents would not have to relinquish custody;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council determine how out-of-home mental health services to severely emotionally disabled children may be delivered throughout the state without requiring the relinquishment of custody by parents; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 719****SENATE CONCURRENT RESOLUTION NO. 4059**

(Senators Wanzek, Krebsbach, Scherber)

(Representatives Austin, Kerzman, Wald)

**NONPUBLIC SCHOOL STUDY**

A concurrent resolution directing the Legislative Council to study the impact of nonpublic schools on the state and the feasibility and desirability of offering assistance to the parents of nonpublic schoolchildren.

**WHEREAS**, there are many children enrolled in kindergarten through grade 12 in the state's nonpublic schools; and

**WHEREAS**, the state's nonpublic schools provide parents with an alternative to the public school system for the education of their children; and

**WHEREAS**, the parents of children in attendance at the state's nonpublic schools also support the public school system through payment of sales, income, and property taxes; and

**WHEREAS**, many parents with children in attendance at the state's nonpublic schools incur significant financial burdens because they have selected an educational alternative to the public school system; and

**WHEREAS**, the state would have incurred an additional 1993-95 biennial foundation aid appropriation in excess of \$27,000,000 if the children enrolled in nonpublic schools had attended public schools; and

**WHEREAS**, many local school districts would face severe overcrowding, new construction costs, and additional personnel and equipment costs if all children now attending nonpublic schools were to enroll in the public school system;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the impact of nonpublic schools on the state, the ability of nonpublic schools to provide children with a quality education and related services, and the feasibility and desirability of offering assistance to the parents of nonpublic schoolchildren to assist with the costs of education; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 28, 1995



**CHAPTER 720****SENATE CONCURRENT RESOLUTION NO. 4060**

(Senator Thane)

**SEXUAL OFFENDERS LAWS STUDY**

A concurrent resolution directing the Legislative Council to study the laws related to sex offenders, including consideration of options for involuntary treatment of civilly committed or criminally incarcerated sex offenders.

**WHEREAS**, the treatment of sex offenders requires long, specialized, and intensive treatment to provide significant results; and

**WHEREAS**, sex offenders may suffer from multiple disorders that complicate effective treatment; and

**WHEREAS**, this state's involuntary civil commitment statute is not tailored to meet the special circumstances presented by sex offenders; and

**WHEREAS**, treatment options for sex offenders are extremely limited in North Dakota, yet are crucial to the protection of the people of this state; and

**WHEREAS**, involuntary civil commitment of sex offenders would provide new options for and burdens on law enforcement and rehabilitation agencies;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the laws related to sex offenders, including consideration of options for involuntary treatment of civilly committed or criminally incarcerated sex offenders; and

**BE IT FURTHER RESOLVED**, that the Legislative Council is encouraged to seek assistance and testimony from the Department of Human Services, the Attorney General, the Department of Corrections and Rehabilitation, members of the judiciary, defense attorneys, and law enforcement agencies; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 721****SENATE CONCURRENT RESOLUTION NO. 4061**

(Senators Nething, G. Nelson, Redlin, Tennefos, Wogsland)

**OBSOLETE STATUTES STUDY**

A concurrent resolution directing the Legislative Council to study the statutes of this state to determine if there are obsolete, redundant, or inaccurate laws that should be eliminated.

**WHEREAS**, the North Dakota Century Code now contains 24,655 sections, comprising the net result of over 100 years of the enactment of legislation; and

**WHEREAS**, when statutes become obsolete, redundant, or inaccurate there is little or no incentive to bring the matter to the attention of the Legislative Assembly and, as a result, laws that should be repealed continue to exist and must be republished with each replacement volume of the North Dakota Century Code; and

**WHEREAS**, state agencies should undertake a thorough review of statutory authority governing their fields of operations on a regular basis, even though they are not required to do so by law; and

**WHEREAS**, review of existing statutory provisions could uncover many provisions of law that can be repealed or updated, resulting in substantial savings;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the statutes of this state to determine if there are obsolete, redundant, or inaccurate laws that should be eliminated; and

**BE IT FURTHER RESOLVED**, that the Legislative Council request that state agencies conduct thorough reviews of statutory authority governing their fields of operation and report their findings on statutes that could be eliminated to the Legislative Council; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 722****SENATE CONCURRENT RESOLUTION NO. 4062**

(Senators Scherber, Mathern, Thane, Wogsland)

(Representative Oban)

**ECONOMIC DEVELOPMENT PROGRAMS STUDY**

A concurrent resolution directing the Legislative Council to study the effectiveness of economic development programs in creating quality jobs, the relationship between economic development efforts and welfare reform efforts, and ways in which economic development programs can be structured to help recipients of aid to families with dependent children achieve self-sufficiency.

**WHEREAS**, economic development programs attempt to improve the state's economy and to create quality jobs that add to the well-being of individuals and families; and

**WHEREAS**, there is continuing discussion regarding the wage and benefit levels of jobs created with state economic assistance; and

**WHEREAS**, there is continued support for welfare reform programs that encourage recipients of aid to families with dependent children to become self-sufficient; and

**WHEREAS**, local economic development authorities prefer economic incentive programs that are easy to administer; and

**WHEREAS**, different views exist regarding the definition of a quality job;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the effectiveness of economic development programs in creating quality jobs, the relationship between economic development efforts and welfare reform efforts, and ways in which economic development programs can be structured to help recipients of aid to families with dependent children achieve self-sufficiency; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 24, 1995

**CHAPTER 723****SENATE CONCURRENT RESOLUTION NO. 4063**

(Senator Kelsh)

(Approved by the Delayed Bills Committee)

**REFLECTORS ON RAILCARS URGED**

A concurrent resolution urging the Federal Railroad Administration to encourage railroads to provide for the application and maintenance of highly reflectorized materials on both sides of all new or refurbished railcars.

**WHEREAS**, many Americans die as the result of driving into the side of trains at poorly marked rail crossings; and

**WHEREAS**, reflectorized material on the sides of railcars would reduce instances where motorists drive into the sides of trains at poorly marked rail crossings; and

**WHEREAS**, railroads are not required to apply or maintain highly reflectorized material on both sides of railcars;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly urges the Federal Railroad Administration to encourage railroads to provide for the application and visibility of highly reflectorized materials on both sides of all new or refurbished railcars; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Federal Railroad Administration and to each member of the North Dakota Congressional Delegation.

Filed April 10, 1995

**CHAPTER 724****SENATE CONCURRENT RESOLUTION NO. 4064**

(Senators Heinrich, Freborg)

(Approved by the Delayed Bills Committee)

**EDUCATIONAL TELECOMMUNICATIONS COUNCIL  
STUDY**

A concurrent resolution directing the Legislative Council to study the North Dakota Educational Telecommunications Council.

**WHEREAS**, the Educational Telecommunications Council is charged with creating educational telecommunications programs and systems within the state; and

**WHEREAS**, the Educational Telecommunications Council has broad powers regarding the development of statewide programs and systems; and

**WHEREAS**, the Educational Telecommunications Council contracts for building and operating public television stations; and

**WHEREAS**, with the onset of the Twenty-first Century, the Educational Telecommunications Council could play a much more significant role in the delivery of elementary, secondary, and higher education;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the Educational Telecommunications Council, the council's role in the creation of educational telecommunications programs and systems within the state, the powers, duties, and makeup of the council, and alternative methods for administering the state's educational telecommunications delivery systems; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed April 5, 1995

**CHAPTER 725****SENATE CONCURRENT RESOLUTION NO. 4065**

(Government and Veterans Affairs Committee)

(Approved by the Delayed Bills Committee)

**STATE EMPLOYEE CLASSIFICATION AND BENEFITS  
STUDY**

A concurrent resolution directing the Legislative Council to study the state employee classification system and the benefits provided to state employees.

**WHEREAS**, the Fifty-fourth Legislative Assembly considered but did not pass Senate Bill Nos. 2105 and 2106, relating to the duties of the State Personnel Board, and the accrual of annual leave and sick leave of all state employees; and

**WHEREAS**, these bills raised questions concerning the merits of a procedure for resolving complaints made by probationary employees and applicants for state employment and concerning leave policies applicable to state employees; and

**WHEREAS**, before establishing grievance procedures and leave policies for all state employees, the Legislative Assembly needs to have complete information on existing grievance procedures and leave policies available to all state employees;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the state employee classification system and the benefits provided to state employees; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 28, 1995

**CHAPTER 726****SENATE CONCURRENT RESOLUTION NO. 4066**

(Government and Veterans Affairs Committee)

(Approved by the Delayed Bills Committee)

**RETIREMENT SYSTEMS CONSOLIDATION STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating functions of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement.

**WHEREAS**, the Fifty-fourth Legislative Assembly considered, but did not enact, legislation that would have established a Public Employees Benefits Board; and

**WHEREAS**, it is in the best interests of the state and its political subdivisions to provide cost-efficient and properly administered retirement programs for the benefit of public employees; and

**WHEREAS**, the adequacy of public employee retirement programs is dependent on the proper administration and investment of public employee retirement funds; and

**WHEREAS**, the merger of the investment functions of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement has been successful and resulted in cost savings; and

**WHEREAS**, the consolidation of additional areas such as accounting, computerization, benefits counseling, and staffing has the potential to result in significant further cost savings, thereby resulting in additional benefits for beneficiaries of the funds; and

**WHEREAS**, any decision whether to consolidate the functions of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement necessarily involves the funds, the participants in the funds, and the beneficiaries of the funds;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council direct the Employee Benefits Committee to study the feasibility and desirability of consolidating functions of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fifth Legislative Assembly.

Filed March 28, 1995

**CHAPTER 727****SENATE CONCURRENT RESOLUTION NO. 4067**

(Senators Holmberg, DeMers, Krebsbach, Mutch, Redlin, Schobinger,  
St. Aubyn, W. Stenehjem, Watne)

(Representatives Christenson, Clayburgh, Delmore, Glassheim, Klein,  
Kliniske, Lloyd, Maragos, Mickelson, Nottestad, Poolman, Price,  
Shide, Svedjan, Timm, Tollefson, Walker, Wentz)

(Approved by the Delayed Bills Committee)

**AIR FORCE BASE SUPPORT**

A concurrent resolution expressing support for the Grand Forks Air Force Base and the Minot Air Force Base.

**WHEREAS**, the Grand Forks Air Force Base and the Minot Air Force Base have served the nation admirably since 1957; and

**WHEREAS**, both the Grand Forks Air Force Base and the Minot Air Force Base serve dual missions, including the housing of minuteman missile wings; and

**WHEREAS**, continued maintenance of dual-mission bases provides the most efficient and economical use of government resources; and

**WHEREAS**, over the past 38 years, the communities of Grand Forks and Minot have developed strong social, cultural, and economic bonds with the Grand Forks and Minot Air Force bases and the personnel assigned to those bases;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly expresses support for the maintenance of the current missions of the Grand Forks Air Force Base and the Minot Air Force Base and urges the Base Closure and Realignment Commission to recognize the important strategic and economic advantages of both facilities; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the leaders of the Air Force base retention groups in Grand Forks and Minot and the mayors of Grand Forks and Minot.

Filed March 27, 1995



**CHAPTER 728****SENATE CONCURRENT RESOLUTION NO. 4068**

(Senator Naaden)

(Employment Committee)

(Approved by the Delayed Bills Committee)

**POSTSESSION EMPLOYEES**

A concurrent resolution authorizing the retention of sufficient employees of the House and Senate to complete legislative work after the close of the session.

**WHEREAS**, it is necessary to complete and close work of the regular session of the Fifty-fourth Legislative Assembly; and

**WHEREAS**, sufficient legislative employees should be retained to complete and close this work;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Secretary of the Senate and the Chief Clerk of the House each retain sufficient employees to complete the work of the Fifty-fourth Legislative Assembly; and

**BE IT FURTHER RESOLVED**, that the Secretary of the Senate and the Chief Clerk of the House determine which employees are necessary after consulting with the majority and minority leaders in their respective houses, coordinate and assign work in their respective houses, and supervise the work to maximize the efficiency of postsession work; and

**BE IT FURTHER RESOLVED**, that the total employment authorized by this resolution, including the postsession work of the Secretary of the Senate and the Chief Clerk of the House, may not exceed 200 days in the aggregate; and

**BE IT FURTHER RESOLVED**, that the Secretary of the Senate and the Chief Clerk of the House shall minimize the number of days required to complete legislative business; and

**BE IT FURTHER RESOLVED**, that employees retained after the session be paid the regular rates of pay for work under this resolution as specified in House Concurrent Resolution No. 3015, and that these employees be paid from funds appropriated for the Legislative Assembly, provided that each employee must be paid on a prorated basis if the total number of days exceeds the aggregate limit.

Filed April 5, 1995

**CHAPTER 729****SENATE CONCURRENT RESOLUTION NO. 4069**

(Senators C. Nelson, Grindberg, Lee, Mathern, Nalewaja, G.

Nelson, Scherber, Tennesos)

(Representatives Austin, Belter, Berg, Bernstein, Carlson,  
Christopherson, Clark, Dalrymple, Dorso, Gorman, Holm, Koppelman, Payne,  
Sandvig, Soukup, Thoreson)

(Approved by the Delayed Bills Committee)

**BISON WOMEN'S BASKETBALL TEAM  
CONGRATULATED**

A concurrent resolution congratulating the North Dakota State University Bison women's basketball team for winning the 1995 NCAA Division II national championship.

**WHEREAS**, the North Dakota State University Bison women's basketball team captured its third consecutive NCAA Division II championship and became the first Division II women's basketball team to win the national championship with an undefeated record; and

**WHEREAS**, in winning its fourth national championship in five seasons the Bison women's basketball team extended its winning streak to 41 consecutive games with a perfect 32-0 record and held the number one national ranking for the entire season; and

**WHEREAS**, Kasey Morlock, most valuable player of the Division II tournament, Lori Roufs, named to the all-tournament team, and the other talented individual athletes distinguished themselves under coach Amy Ruley's guidance by displaying exemplary teamwork in pursuit of their goal to claim another national championship, a performance of which North Dakotans are extremely proud;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly takes pride in extending to all members and coaches of the North Dakota State University Bison women's basketball team its heartiest congratulations for winning the 1995 NCAA Division II women's national basketball championship; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward enrolled copies of this resolution to each member of the North Dakota State University Bison women's basketball team, to each of their coaches, and to the president of North Dakota State University, home of the Bison.

Filed April 5, 1995

**CHAPTER 730****SENATE CONCURRENT RESOLUTION NO. 4070**

(Senators Andrist, Bowman, Christmann, DeMers, Freborg, Goetz, Grindberg, Heinrich, Heitkamp, Holmberg, Kelsh, Kinnoin, Krauter, Krebsbach, Kringstad, Langley, LaFountain, Lee, Lindaas, Lips, Mathern, Mushik, Mutch, Naaden, Nalewaja, C. Nelson, G. Nelson, Nething, O'Connell, Redlin, Robinson, Sand, Scherber, Schobinger, Solberg, St. Aubyn, B. Stenehjerm, W. Stenehjerm, Streibel, Tallackson, Tennefos, Thane, Tomac, Traynor, Urlacher, Wanzek, Watne, Wogsland, Yockim)  
(Representatives Aarsvold, Austin, Bateman, Belter, Berg, Bernstein, Boehm, Boucher, Brown, Byerly, Carlisle, Carlson, Christenson, Christopherson, Clark, Clayburgh, Coats, Dalrymple, Delmore, Delzer, DeKrey, DeWitz, Dobrinski, Dorso, Drovdal, Freier, Froseth, Galvin, Gerntholz, Glasheim, Gorder, Gorman, Grosz, Grumbo, Guleson, Gunter, Hagle, Hanson, Hausauer, D. Henegar, K. Henegar, Holm, Howard, Huether, Jacobs, Johnson, Kaldor, Keiser, Kelsch, Kempenich, Kerzman, Klein, Kliniske, Koppelman, Kretschmar, Kroeber, Kunkel, Laughlin, Lloyd, Mahoney, Maragos, Martin, Martinson, Mickelson, Monson, Mutzenberger, Nicholas, Nichols, Nottestad, Oban, Olson, Payne, Poolman, Price, Rennerfeldt, Retzer, Rydell, Sabby, Sandvig, Schimke, Schmidt, Shide, Sitz, Skarphol, Soukup, Stenehjerm, Svedjan, Sveen, Thompson, Thoreson, Timm, Tollefson, Torgerson, Wald, Walker, Wardner, Wentz, Wilkie)

(Approved by the Delayed Bills Committee)

**CHESTER E. NELSON, JR., COMMENDED**

A concurrent resolution commending Chester E. Nelson, Jr., on 30 years of service to the Legislative Council.

**WHEREAS**, the Legislative Assembly created the position of Legislative Budget Analyst and Auditor in 1965 and Chester E. Nelson, Jr., was appointed to fill that position; and

**WHEREAS**, Chet Nelson is the only individual who has ever held the position of Legislative Budget Analyst and Auditor; and

**WHEREAS**, Chet Nelson has received national recognition as president of the National Association of Legislative Fiscal Officers and as a member of the Executive Committee of the National Conference of State Legislatures; and

**WHEREAS**, Chet Nelson has served his profession and community well, having served as president of the North Dakota State Board of Accountancy and as president of the Bismarck United Way; and

**WHEREAS**, members of the Legislative Assembly are indebted to Chet Nelson for his 30 years of dedication and professionalism;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly commends Chester E. Nelson, Jr., upon the achievement of 30 years of dedicated service as Legislative Budget Analyst and Auditor for the Legislative Council; and

**BE IT FURTHER RESOLVED**, that the Secretary of State present an enrolled copy of this resolution to Chester E. Nelson, Jr.

Filed April 5, 1995

# HOUSE MEMORIAL RESOLUTION

## CHAPTER 731

### HOUSE MEMORIAL RESOLUTION NO. 7001

(Representatives Martin, Dorso, Oban, Gerntholz)  
(Memorial Resolutions Committee)

### HOUSE MEMBERS MEMORIAL

A memorial resolution for deceased members of the House of Representatives of North Dakota.

**WHEREAS**, God has summoned to eternal rest our former colleagues:

**HARRY CARLSON**, who served in the 27th and 28th Legislative Assemblies, from District 1, died December 5, 1993;

**HELMER DAHLEN**, who served in the 39th and 40th Legislative Assemblies, from District 17, died September 5, 1994;

**RALPH E. DIEHL**, who served in the 36th through the 38th Legislative Assemblies, from District 8, and in the 40th and 41st Legislative Assemblies, from District 20, died May 12, 1993;

**GOTTLIEB FRANK**, who served in the 29th through the 39th Legislative Assemblies, from District 35, died January 10, 1994;

**JAMES "JIM" A. HAUGEN**, who served in the 50th and 51st Legislative Assemblies, from District 1, died January 8, 1995;

**ALVIN HAUSAUER**, who served in the 42nd through the 44th Legislative Assemblies, from District 32, and in the 45th through the 47th and the 49th through the 51st Legislative Assemblies, from District 49, died January 20, 1995;

**DONALD L. HERTZ**, who served in the 38th and 39th Legislative Assemblies, from District 30, died February 27, 1995;

**FRED HOGHAUG**, who served in the 40th and 41st Legislative Assemblies, from District 15, died March 25, 1993;

**GILMAN A. KLEFSTAD**, who served in the 29th through the 32nd Legislative Assemblies, from District 13, died May 1, 1993;

**LESTER G. LARSON**, who served in the 35th, 36th, and 38th Legislative Assemblies, from District 17, died November 26, 1993;

**LAWRENCE MARSDEN**, who served in the 43rd through the 47th Legislative Assemblies, from District 6, died January 27, 1994;

DAGNE B. OLSEN, who served in the 47th through the 53rd Legislative Assemblies, from District 19, died August 20, 1994;

SELMER OVERBO, who served in the 37th and 38th Legislative Assemblies, from District 21, died March 5, 1993;

EARL C. RUNDLE, who served in the 39th through the 44th Legislative Assemblies, from District 39, died July 21, 1994;

RALPH SCOTT, who served in the 33rd through the 37th Legislative Assemblies, from District 23, died May 27, 1993;

WILLIAM H. TOUSSAINT, who served in the 33rd Legislative Assembly, from District 9, died December 7, 1993;

HOWARD G. VOGEL, who served in the 38th and 39th Legislative Assemblies, from District 22, died January 27, 1995;

GERHART WILKIE, who served in the 35th through the 39th Legislative Assemblies, from District 19, and in the 40th through the 44th Legislative Assemblies, from District 9, died December 25, 1994; and

**WHEREAS**, we now pause to mourn the passing of our former House colleagues and to honor their memories; and

**WHEREAS**, these legislators rendered outstanding service to the people of the state by their contributions to public service;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:**

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

**BE IT FURTHER RESOLVED**, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased representatives.

Filed March 9, 1995

# HOUSE CONCURRENT MEMORIAL RESOLUTION

## CHAPTER 732

### HOUSE CONCURRENT MEMORIAL RESOLUTION NO. 7501

(Representatives Aarsvold, Austin, Bateman, Belter, Berg, Bernstein, Boehm, Boucher, Brown, Byerly, Carlisle, Carlson, Christenson, Christopherson, Clark, Clayburgh, Coats, Dalrymple, DeKrey, Delmore, Delzer, DeWitz, Dobrinski, Dorso, Drovdal, Freier, Froseth, Galvin, Gerntholz, Glassheim, Gorder, Gorman, Grosz, Grumbo, Gulleason, Gunter, Hagle, Hanson, Hausauer, D. Henegar, K. Henegar, Holm, Howard, Huether, Jacobs, Johnson, Kaldor, Keiser, Kelsch, Kempenich, Kerzman, Klein, Kliniske, Koppelman, Kretschmar, Kroeber, Kunkel, Laughlin, Lloyd, Mahoney, Maragos, Martin, Martinson, Mickelson, Monson, Mutzenberger, Nicholas, Nichols, Nottestad, Oban, Olson, Payne, Poolman, Price, Rennerfeldt, Retzer, Rydell, Sabby, Sandvig, Schimke, Schmidt, Shide, Sitz, Skarphol, Soukup, Stenehjerm, Svedjan, Sveen, Thompson, Thoreson, Timm, Tollefson, Torgerson, Wald, Walker, Wardner, Wentz, Wilkie; Senators Andrist, Bowman, Christmann, DeMers, Freborg, Goetz, Grindberg, Heinrich, Heitkamp, Holmberg, Kelsh, Kinnoin, Krauter, Krebsbach, Kringstad, LaFountain, Langley, Lee, Lindaas, Lips, Mathern, Mushik, Mutch, Naaden, Nalewaja, C. Nelson, G. Nelson, Nething, O'Connell, Redlin, Robinson, Sand, Scherber, Schobinger, Solberg, St. Aubyn, B. Stenehjerm, W. Stenehjerm, Streibel, Tallackson, Tennefos, Thane, Tomac, Traynor, Urlacher, Wanzek, Watne, Wogsland, Yockim)

### ALVIN HAUSAUER MEMORIAL

A concurrent memorial resolution expressing sorrow upon the death of former Representative Alvin Hausauer.

**WHEREAS**, Almighty God in His infinite wisdom has called from our midst an outstanding citizen of the state of North Dakota, Alvin Hausauer; and

**WHEREAS**, Alvin Hausauer served as a representative from District 32 in the 1971, 1973, and 1975 legislative sessions, and from District 49 in the 1977, 1979, 1981, 1985, 1987, and 1989 sessions; and

**WHEREAS**, former Representative Alvin Hausauer had a distinguished career of legislative service, including four sessions as chairman and three sessions as vice chairman of the Finance and Taxation Committee of the House of Representatives; and

**WHEREAS**, former Representative Alvin Hausauer continued his service to his state as legislative director to the Governor; and

**WHEREAS**, former Representative Alvin Hausauer was known for his keen understanding of the legislative process and was widely respected by members of both houses, members of all political persuasions, and everyone with whom he had contact in all three branches of state government;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Fifty-fourth Legislative Assembly expresses its keen and personal sorrow on the passing of former Representative Alvin Hausauer and on behalf of the citizens of this state expresses to his widow, Arlene Hausauer, and to the members of his family, the deepest appreciation for the outstanding contributions made to this state by former Representative Alvin Hausauer; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward an enrolled copy of this resolution to Arlene Hausauer.

Filed January 26, 1995



# SENATE MEMORIAL RESOLUTION

## CHAPTER 733

### SENATE MEMORIAL RESOLUTION NO. 8001 (Memorial Resolutions Committee)

#### SENATE MEMBERS MEMORIAL

A memorial resolution for deceased members of the Senate of North Dakota.

**WHEREAS**, God has summoned to eternal rest our former colleagues:

**PHILLIP A. BERUBE**, who served in the 33rd through the 39th Legislative Assemblies, from District 19, and in the 40th through the 49th Legislative Assemblies, from District 9, died May 7, 1993;

**CHUCK GOODMAN**, who served in the 43rd through the 48th Legislative Assemblies, from District 17-18, died March 17, 1993;

**MILTON G. KELLY**, who served in the 40th and 41st Legislative Assemblies, from District 15, died October 31, 1993;

**DAN KISSE**, who served in the 36th through the 39th Legislative Assemblies, from District 48, died January 29, 1995;

**GILMAN A. KLEFSTAD**, who served in the 33rd through the 36th Legislative Assemblies, from District 13, died May 1, 1993;

**LESTER G. LARSON**, who served in the 39th through the 44th Legislative Assemblies, from District 17, and in the 45th Legislative Assembly, from District 23, died November 26, 1993;

**HERSCHEL LASHKOWITZ**, who served in the 39th and 44th Legislative Assemblies, from District 9, and in the 45th through the 51st Legislative Assemblies, from District 21, died September 7, 1993;

**ROBERT MELLAND**, who served in the 40th through the 47th Legislative Assemblies, from District 29, died August 3, 1993;

**ORRIS G. NORDHOUGEN**, who served in the 28th through the 33rd Legislative Assemblies, from District 20, died February 7, 1994;

**ARNOLD PIETRON**, who served in the 45th Legislative Assembly, from District 19, died September 19, 1993;

**GEORGE RAIT**, who served in the 39th Legislative Assembly, from District 40, and in the 40th through the 46th Legislative Assemblies, from District 2, died May 3, 1994;

ARNE "BOB" G. SANFORD, who served in the 38th Legislative Assembly, from District 41, died July 30, 1993;

LESTER J. SCHIRADO, who served in the 45th and 46th Legislative Assemblies, from District 34, died June 24, 1993; and

WHEREAS, we now pause to mourn the passing of our former Senate colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:**

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

**BE IT FURTHER RESOLVED**, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the Senate and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased senators.

Filed March 9, 1995