

NORTH DAKOTA ADMINISTRATIVE CODE

(Pages 1 - 327)

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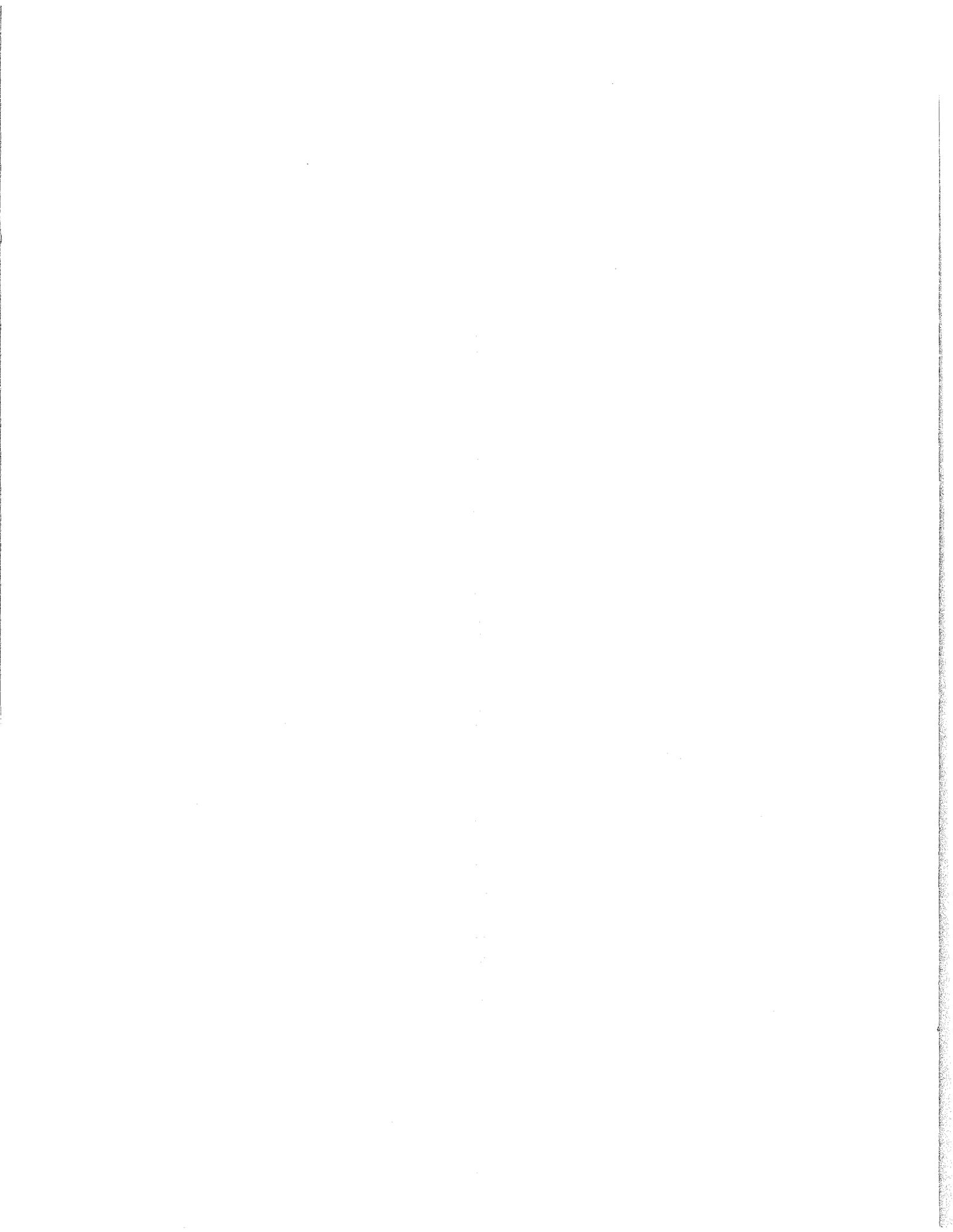
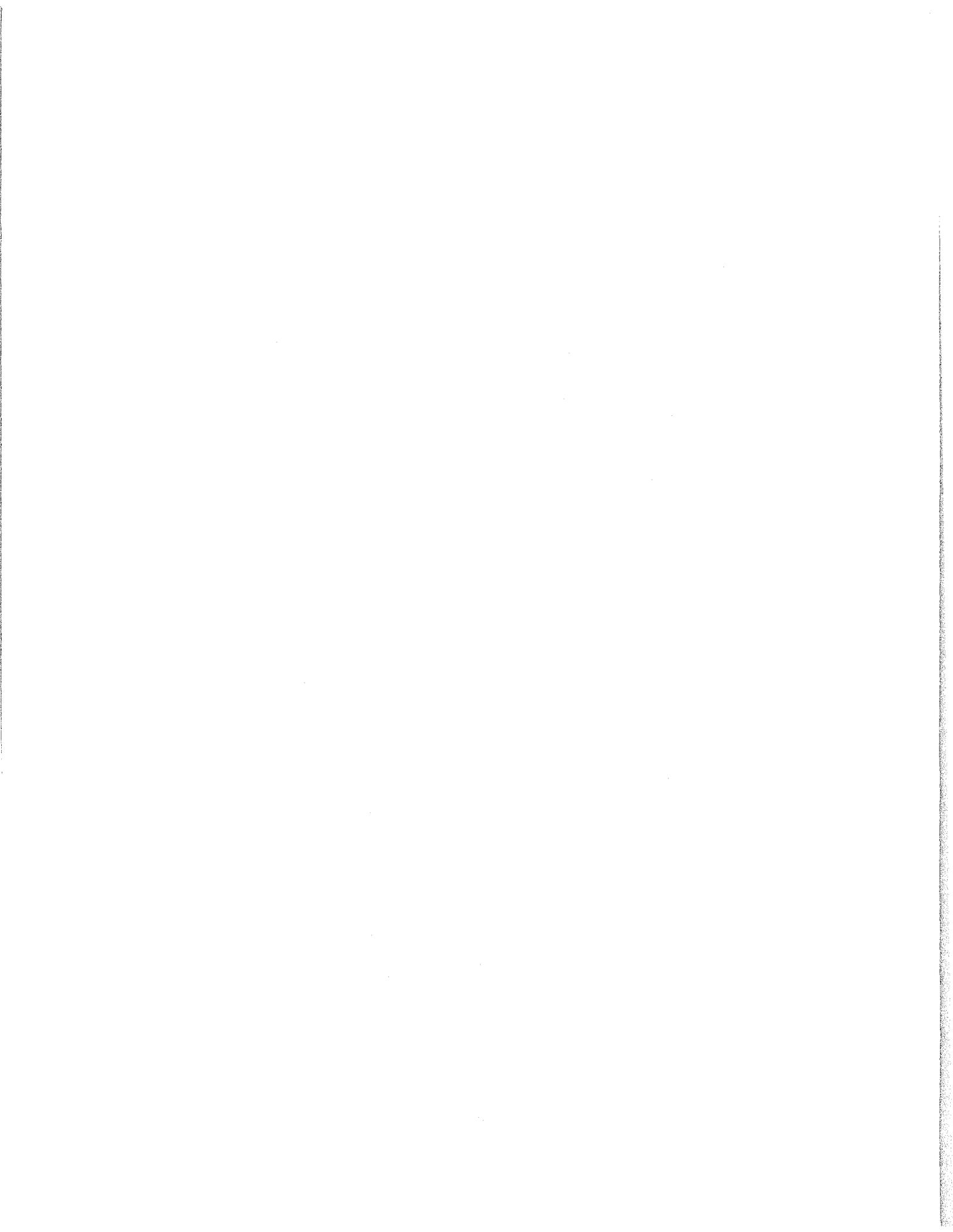


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TITLE 2

ABSTRACTERS' BOARD OF EXAMINERS

APRIL 2006

CHAPTER 2-02-01

2-02-01-01. Continuing education requirements - Reporting periods. Beginning on July 1, 1995, each abstractor who is a holder of a certificate of registration under North Dakota Century Code chapter 43-01 shall complete not less than eighteen hours of approved continuing education during each three-year period that the abstractor is a holder of a certificate of registration in this state. Continuing education hours will not accumulate beyond each three-year period.

The reporting period for abstractors holding a certificate of registration in the state prior to July 1, 1995, begins on July 1, 1995, and will conclude on June 30, 1998. Subsequent reporting periods will conclude on June thirtieth every three years thereafter. The reporting periods for ~~all other~~ abstractors who received an initial certificate of registration between July 1, 1995, and July 1, 2007, will commence on July first succeeding the date the abstractor initially secures a certificate of registration to practice in this state and concludes on June thirtieth three years later. Subsequent reporting periods for these abstractors will conclude on June thirtieth every three years thereafter. Credits for continuing education hours acquired at the North Dakota land title association school after January 1, 1995, and prior to July 1, 1995, will be recognized.

The reporting period for abstractors who initially receive a certificate of registration after July 1, 2007, begins on July 1, 2007, and will conclude on June 30, 2010. Subsequent reporting periods for these abstractors will conclude on June thirtieth every three years thereafter. New abstractors shall have the same reporting dates as existing abstractors, but the required total of continuing education hours for their initial reporting period shall be prorated based on the number of years to the next reporting date.

History: Effective May 1, 1995; amended effective April 1, 2006.

General Authority: NDCC 43-01-10(4)

Law Implemented: NDCC 43-01-10(4)

2-02-01-04. Computation of hours. Credit hours will be awarded on the basis of one hour for each ~~sixty~~ fifty minutes actually spent in the attendance at a

course or event approved by the board. Credit hours will be rounded to the nearest quarter hour.

History: Effective May 1, 1995; amended effective April 1, 2006.

General Authority: NDCC 43-01-10(4)

Law Implemented: NDCC 43-01-10(4)

ARTICLE 2-03

PRACTICE STANDARDS

<u>Chapter</u>	
<u>2-03-01</u>	<u>Timeliness of Service</u>
<u>2-03-02</u>	<u>Ethics</u>
<u>2-03-03</u>	<u>Billing</u>

CHAPTER 2-03-01 TIMELINESS OF SERVICE

<u>Section</u>	
<u>2-03-01-01</u>	<u>Logbook</u>
<u>2-03-01-02</u>	<u>Timeliness of Service</u>
<u>2-03-01-03</u>	<u>Exceptions to Presumed Timeliness Standard</u>
<u>2-03-01-04</u>	<u>Practice Parameters</u>
<u>2-03-01-05</u>	<u>Work Product Requirements</u>

2-03-01-01. Logbook. Every abstract office shall maintain a logbook of requested abstract work. The logbook must document the customer's name, the date the request for work is received, the promised or expected completion date, the actual completion date, and a remarks column. Except as otherwise agreed by the customer, the expected completion date will be three weeks or less after receipt of the work order. The abstracter shall note any extenuating circumstances under section 2-03-01-03, and shall include an explanation if work is not completed within three weeks. The board or the board's representative may examine the logbook at any time, either in person or by requiring the abstracter to photocopy pages from the book and mail them to the board or the board's representative or by requiring the abstracter to fax pages from the logbook to a designated facsimile machine within a specified time period.

History: Effective April 1, 2006.
General Authority: NDCC 43-01-16
Law Implemented: NDCC 43-01-16

2-03-01-02. Timeliness of service. Under normal circumstances, the abstracter will complete each requested abstract work order within a presumed period of three weeks or less from receipt of the requested abstract work order.

History: Effective April 1, 2006.
General Authority: NDCC 43-01-16
Law Implemented: NDCC 43-01-16

2-03-01-03. Exceptions to presumed timeliness standard. The following are exceptions from the standard presumed turnaround time of three weeks or less:

1. The customer and abstract company have mutually agreed upon a different time limit, which must be documented in the logbook.

2. Circumstances other than the customer's consent which may prevent an abstract company from completing a job request within three weeks include:
 - a. The extended absence of a key employee or employees due to illness, death in the employee's immediate family, deployment by any branch of the armed forces, jury duty, or a reasonable unavoidable absence caused by circumstances beyond the employee's control.
 - b. The abstracter is delayed by waiting for information from third parties or the customer which prevent the abstracter from completing the work.
 - c. The abstract job is too voluminous to be completed within a three-week time period. In which case, the abstracter shall notify the customer and attempt to mutually agree upon a specific date.
 - d. Work may be delayed until the requesting customer's previous invoices have been paid.
3. If requested abstract work is received by means other than personal delivery, and if the abstract company determines the job cannot be completed within three weeks of receipt, or within the time limits stated in correspondence from the customer, then the abstract company must contact the customer and negotiate a reasonable completion date, which must be documented in the logbook.

History: Effective April 1, 2006.

General Authority: NDCC 43-01-16

Law Implemented: NDCC 43-01-16

2-03-01-04. Practice parameters. In addition to any other disciplinary measure available to the board, if the board determines there are consistent problems with tardiness in completing abstract work under normal circumstances, the board may require the abstract company to hire and to train additional employees at the company's expense.

History: Effective April 1, 2006.

General Authority: NDCC 43-01-16

Law Implemented: NDCC 43-01-16

2-03-01-05. Work product requirements. As part of the duty to provide an abstract on request:

1. Abstracters and abstract companies may not refuse to provide an industry acceptable alternative abstract product, such as stubbing separate parcels or providing a partial abstract, if requested in writing

by a customer and if the alternative is not adverse to provisions guiding such products or the usage thereof under law.

2. Abstracters and abstract companies may not refuse to exclude from abstracts of title, at the customer's written request, recorded documents such as zoning ordinances, mineral instruments, or other documents under North Dakota Century Code section 43-01-15.1.

History: Effective April 1, 2006.

General Authority: NDCC 43-01-05, 43-01-16

Law Implemented: NDCC 43-01-15.1, 43-01-16

CHAPTER 2-03-02
ETHICS

Section

<u>2-03-02-01</u>	<u>Practicing Law</u>
<u>2-03-02-02</u>	<u>Confidentiality</u>
<u>2-03-02-03</u>	<u>Public Duty</u>
<u>2-03-02-04</u>	<u>Abstracters Serve the Interests of Real Estate Owners, Purchasers, and Lenders</u>

2-03-02-01. Practicing law. Abstracters are well-versed in land title law and may find customers seeking to rely upon the abstractor's advice in legal matters. Abstracters are not attorneys by virtue of their certificate of registration or authority from the board. Abstracters may provide professional advice within the scope of practice as an abstractor, but they may not provide title examination nor shall abstracters create legal documents for customers. All these acts may be deemed to be practicing law, and may not be performed by an abstractor unless the abstractor is admitted to practice law by the North Dakota supreme court.

History: Effective April 1, 2006.

General Authority: NDCC 43-01-05, 43-01-16

Law Implemented: NDCC 43-01-16

2-03-02-02. Confidentiality. Abstracters shall practice confidentiality in all facets of their work in order to protect their customers' privacy.

History: Effective April 1, 2006.

General Authority: NDCC 43-01-05, 43-01-16

Law Implemented: NDCC 43-01-16

2-03-02-03. Public duty. Abstracters must at all times conscientiously perform their duties to protect the legal rights and expectations of their customers and the community, they must provide the best possible abstract products and services, and they shall at all times maintain honesty in providing their services. Ready transferability of land ownership or interests result from accuracy and perfection of titles and therefore abstracters shall issue abstracts of title only after a complete, thorough search founded on adequate records and they shall conduct their business so that the needs of their customers and the community are given paramount importance.

History: Effective April 1, 2006.

General Authority: NDCC 43-01-05

Law Implemented: NDCC 43-01-16

2-03-02-04. Abstracters serve the interests of real estate owners, purchasers, and lenders.

- 1. Abstracters shall facilitate transactions involving title by eliminating delays and unnecessary exceptions and making their services available**

in a manner which will encourage transferability of title. Abstracters and their employees may not engage in any unfair or deceptive acts or practices and shall conduct their business so as to promote the public interest and the continued integrity and stability of the abstract profession.

2. Abstract companies, abstracters, and abstract company employees must be courteous and prompt when communicating with their customers regarding timelines, abstract products, and other issues in order to avoid misunderstandings and prevent hardship for the customers.
3. Abstracters serve the public by assisting with other people's business transactions. This duty requires trust and confidence in the abstract profession. Abstract companies, abstracters, and abstract company employees may not abuse their position by wrongfully interfering with transactions between their customers and other people. Wrongful interference includes intentionally usurping a customer's sales for other services, such as title insurance, or any intentional act that creates, supports, or promotes an unlawful interference with business, except that actual damages need not be proven.

History: Effective April 1, 2006.

General Authority: NDCC 43-01-05

Law Implemented: NDCC 43-01-16

CHAPTER 2-03-03
BILLING

Section

2-03-03-01

Billing

2-03-03-01. Billing. An abstractor may charge no more than is allowed under North Dakota Century Code section 43-01-18. The following rules guide charges under the law:

1. Charges are allowed for searching different names, but a separate charge may not be made for the same or substantially the same name. A name with or without a middle initial is substantially the same name, but names with substantial differences, such as the suffixes jr. or sr., are different names. A married woman who uses the prefix mrs. followed by her husband's given name and surname creates a different name for searching than the woman's given name and her married surname. Also, a separate search charge may be made if a person's name has changed for any reason, such as marriage (including name combinations or hyphenations).
2. It is presumptively not overcharging to search all names on the title within the last forty years for tax and judgment liens, if relevant to the time period being searched.
3. Recording practices differ across the state. When billing, an abstractor shall charge based on the actual recording practice in the county.
 - a. Some counties will record documents as miscellaneous instruments and some counties will record the same documents as deeds or mortgages. Abstractors may charge by the actual recording.
 - b. Any document that was recorded as a single document may only be charged as a single instrument without regard to the number of attachments, letters, or riders. Conversely, if a document was recorded separately, it may be charged as a separate instrument even if it obviously relates to an additional instrument.
4. Charges for miscellaneous documents are based on the number of words in the document as abstracted and may not be based on the number of words in the document itself. Photocopies or verbatim documents may only be charged as a single entry.
5. Judgments, taxes, and tax liens are shown on the certification and are included within the certification fee and the name search charge. An additional charge is not allowed if a separate page is required for judgments and tax liens shown as attachments.

6. Abstracters may pass on to their customers the fees and costs that are charged to them for searches, recording fees, postage, etc.

History: Effective April 1, 2006.

General Authority: NDCC 43-01-05, 43-01-16

Law Implemented: NDCC 43-01-15, 43-01-16, 43-01-18

TITLE 3
STATE BOARD OF ACCOUNTANCY

APRIL 2006

CHAPTER 3-01-02

3-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Accountant" means either a certified public accountant (CPA) or a licensed public accountant (LPA), except as provided in section 3-01-02-02.
2. "Accounting concentration" means:
 - a. Through December 31, 1999, thirty semester credits or equivalent of accounting and business law education; and
 - b. After December 31, 1999, twenty-four semester credits or equivalent of accounting education, plus twenty-four credits of other business courses.
 - c. After December 31, 2004, twenty-four semester credits or equivalent of accounting education (not including principles of accounting or equivalent classes), plus twenty-four credits of other business courses (which could include principles of accounting or equivalent classes).
3. "AICPA" means the American institute of certified public accountants.
4. "Bookkeeping" means the maintaining of financial records and preparation of tax returns. Bookkeeping does not include the preparation of any financial statement or similar such documents on which language similar to that utilized by certified public accountants or licensed public accountants is placed including compilation and review language.
5. "Enterprise" means any person, persons, or entity, whether or not organized for profit, for which an accountant provides services.

6. "Financial statements" means a presentation of financial data, including any accompanying notes, intended to show financial position at a point in time or changes in financial position for a period of time in accordance with generally accepted accounting principles or another comprehensive basis of accounting. Incidental financial data included in management advisory services, reports to support recommendations to a client, and tax returns and supporting schedules are not financial statements.
7. "NSA" means the national society of accountants.
8. "NASBA" means the national association of state boards of accountancy.
9. "Practice of public accounting" does not include reviews conducted under the AICPA or NSA peer review programs or the AICPA's quality review program or the board's positive review program, or any other similar program approved by this board.

The terms "public practice", "practice", "practice of public accountancy", and "practice public accounting", shall be synonymous with the term "practice of public accounting".

History: Amended effective January 1, 1987; July 1, 1991; March 1, 1995; October 1, 1999; December 1, 2003; April 1, 2006.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03

3-01-02-02. Use of words accountant and accounting. Except as provided in subsections 2, 3, 4, 5, and 6 of North Dakota Century Code section 43-02.2-12, a person or firm assuming or using any title or designation that includes the words "accountant" or "accounting" does not imply the person or firm holds a valid certificate, license, or permit issued under North Dakota Century Code chapter 43-02.2 or has special competence as an accountant or auditor, if the words are accompanied by a suitable disclaimer. The disclaimer must state that the person is not a CPA, LPA, or licensee of the state board of accountancy, or the firm is not a CPA firm, LPA firm, or licensee of the state board of accountancy, and the services performed are limited to services which do not require a certificate, license, or permit. If the title or designation that includes the words "accountant" or "accounting" is used in printed form, the disclaimer must be printed in ten-point type size or larger on each page in which the title or designation appears. In any form of the use of a title or designation that includes the words "accountant" or "accounting", the disclaimer is suitable if its location, size or volume, and form clearly informs the public.

History: Effective April 1, 2006.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, 43-02.2-12

TITLE 10
ATTORNEY GENERAL

APRIL 2006

CHAPTER 10-16-01

10-16-01-01. Definitions. As used in this article:

1. "Applicant's agent" means a general manager, sole proprietor, partner of a partnership, or, for a corporation, an officer or director who is primarily responsible for financial affairs or a shareholder who owns five ten percent or more of the common stock, of a business that is applying for or renewing a license. A general manager is a person who regularly is onsite and primarily responsible and accountable for managing and controlling the day-to-day operation of the business.
2. "Draw" means the formal process of randomly selecting winning numbers, letters, or symbols that determine the number of winning tickets plays for each prize level of a game.
3. "Game" means an on-line game authorized by the lottery.
4. ~~"Game board" means the area of a play slip that contains one or two sets of numbered squares to be marked by a player for a game. Each set contains a certain number of numbers or symbols that correspond to the game.~~
5. "Grand prize" means the top prize that can be won in a game.
- 6: 5. "Lottery" means the North Dakota lottery.
- 7: 6. "Multi-state lottery" means a lottery game that spans the individual borders of a state, province, district, commonwealth, territory, or country.
- 8: 7. "MUSL" means the multi-state lottery association.
- 9: 8. "Online gaming system" means a computer system designed to control, monitor, communicate with a terminal, and record play transactions and accounting data.

40. ~~9.~~ "Play" means the numbers, letters, or symbols that are on a ticket or properly and validly registered subscription play to be played by a player.
10. "Play area" means the area of a play slip that contains one or two sets of numbered squares to be marked by a player for a game. Each set contains a certain number of numbers, letters, or symbols that correspond to the game.
11. "Play slip" means a card used in marking a player's game selections of numbers, letters, or symbols and containing one or more game boards play areas for a game.
12. "Product group" means a group of multi-state lotteries that have joined together to offer a particular game according to the terms of the MUSL and group's rules.
13. "Quick pick" means a random selection of ~~two-digit~~ numbers, letters, or symbols by a computer system that are printed on a ticket or properly and validly registered subscription play and played by a player for a draw in a game ~~for a draw~~.
- ✓ 14. "Set prize" means all prizes, except the grand prize for POWERBALL® and HOT LOTTO®, a game that are advertised to be paid by a single cash payment and, except as provided by rule, will be equal to the prize amount established by the MUSL ~~board~~ product group for the prize level of the game.
15. "Terminal" means a device authorized by the lottery and operated by a retailer or the lottery to function in an on-line, interactive mode with the lottery's computer system to issue a ticket and enter, receive, and process a lottery transaction, including a purchase, validation of a ticket, and transmittal of a report.
16. "Ticket holder" means a person who has signed a ticket or possesses an unsigned ticket.
17. "Validation" means the process of determining whether a ticket presented for a prize is a winning ticket.
18. "Winning numbers" means the numbers, letters, or symbols randomly selected at a draw that are used to determine a winning play contained on a ticket or properly and validly registered subscription play.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-18~~ 53-12.1-13

10-16-01-02. Advertising.

1. The lottery shall arrange for a retailer to be provided with:
 - a. Point-of-sale promotional material, including ~~decal, game brochure, promotional poster, and customer display sign to promote or explain a game~~ lottery signage; and
 - b. ~~Brochure on problem~~ Problem gambling helpline telephone number.

2. Advertising and promotional material provided by the lottery must:
 - a. For a game brochure, indicate how a game is played, amount of prize offered, where and how a ticket may be bought, when a draw is held, odds on a game, and whether the grand prize is payable, at a player's option, on an annuitized basis or as a lump sum payment; and
 - b. Present the lottery as a form of entertainment.

3. Advertising ~~materials~~ material may not:
 - a. Present a game as an investment to achieve financial security;
 - b. Target a specific ethnic, racial, or religious group of people;
 - c. Use the name, signature, or picture of a current elected or serving state official to promote a game. However, the name and picture of the attorney general may appear on the lottery's web site and in the lottery's newsletter;
 - d. Indicate that a person has a better chance of winning by purchasing a ticket at a specific retailer's site;
 - e. Promise or imply that a person will win or that a person who does not play has lost anything, other than a chance to win. However, advertising may promote the opportunity available to win; or
 - f. Misrepresent a chance of winning a prize; ~~or.~~
 - ~~g. Degrade a person who does not buy a ticket.~~

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-07, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-01-03. Debt setoff of prize. In applying North Dakota Century Code section ~~53-12-34~~ 53-12.1-12, if two or more persons or state agencies make a claim

to part or all of a player's prize amount and one of the claims is for child support, the lottery shall transfer the amount claimed for child support directly to the state disbursement unit of the department of human services, transfer any remaining prize amount up to the amount of the other claim to Burleigh County district court, and then make a payment of any remaining prize amount to the player. However, if none of the claims is for child support, the lottery shall transfer an amount up to the total amount of the claims to Burleigh County district court and make a payment of any remaining prize amount to the player. The lottery shall notify each of the affected state agencies or persons of the amount transferred to district court. The lottery shall notify the player in writing of the proposed debt setoff and the player's recourse. If the player disputes the child support claim, the player shall pursue remedial action according to subsection 2 of North Dakota Century Code section 50-09-14. If the player disputes a claim unrelated to child support, the player may pursue remedial action through district court.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-18, 53-12-32, 53-12-34~~ 53-12.1-12, 53-12.1-13

10-16-01-04. Audit of security. ~~To comply with subsection 6 of North Dakota Century Code section 53-12-07, the lottery shall have a comprehensive study and evaluation performed on the lottery's security, including:~~ Repealed effective April 1, 2006.

- ~~1. Physical premises;~~
- ~~2. Game management system;~~
- ~~3. Ticket sales, ticket validation, and prize payment procedures;~~
- ~~4. Unclaimed prize data;~~
- ~~5. Telecommunications network;~~
- ~~6. On-line and secondary on-line gaming system and primary and secondary internal control systems; and~~
- ~~7. General operation.~~

~~**History:** Effective February 1, 2004.~~

~~**General Authority:** NDCC 53-12-18~~

~~**Law Implemented:** NDCC 53-12-02, 53-12-04, 53-12-07, 53-12-18~~

10-16-01-05. Restrictions and, requirements, and authorizations.

1. An employee of the lottery or a member of the immediate family or a person who regularly resides in the same household of the employee may not receive a gift, gratuity, or other thing of value, excluding food, nonalcoholic beverage, or incidental item, from an applicant for

a license, licensed retailer, or online gaming system or advertising vendor.

2. ~~On a fiscal year basis, the lottery shall determine the amount of special funds that are to be transferred to the state treasurer for deposit in the compulsive gambling prevention and treatment fund. The lottery shall transfer the special funds to the state treasurer by September thirtieth.~~
3. ~~The lottery shall arrange for the distribution of a terminal, ticket stock, point-of-sale items, and supplies to a retailer.~~
4. The director of the lottery may waive a rule when it is in the best interest of the state, lottery industry, or public.
5. ~~3.~~ In applying subdivision d of subsection 1 of North Dakota Century Code section ~~53-12-28~~ 53-12.1-11, personal information on a winning player does not include an amount won or the player's city or state of residence. If the player signs a release, the lottery may disclose or publish personal information that the player authorizes to be released. Subdivision d of subsection 1 of North Dakota Century Code section 53-12.1-11 does not apply to cash, merchandise, a subscription, or a ticket that the lottery awards as a prize in a promotion.
6. ~~4.~~ If a lottery rule conflicts with an official or updated MUSL or product group rule or game rule of the MUSL, the MUSL official or updated MUSL or product group rule or game rule supersedes the lottery rule. The official MUSL or product group rule or game rule governs the administration of a game.
5. The lottery may conduct a promotion that includes a prize and shall prescribe promotional rules.
6. The lottery may immediately withdraw a lottery terminal, equipment, and supplies from a retailer's site if the retailer's license is inactive, suspended, revoked, or the retailer's license was not renewed.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-18, 53-12-21, 53-12-28~~ 53-12.1-02, 53-12.1-08, 53-12.1-11, 53-12.1-13

CHAPTER 10-16-02

10-16-02-01. License application and fee.

1. An applicant shall initially apply for a license for a site on a form prescribed by the lottery and remit an application fee of fifty dollars that is not refundable. ~~A retailer shall reapply for an annual license for a site before October first of each year.~~ The licensing fiscal year is October first through September thirtieth. An applicant may apply for a license for more than one site. A separate application is required for each site. ~~If a retailer has more than one terminal at a site, only one license is required for the site.~~ Approval of an applicant is within the sole discretion of the lottery. Only one retailer may have a license for a specific site. A retailer shall apply for a renewal license for a site before October first of each year.
2. If the lottery approves an applicant for licensure for a site, the applicant shall remit a license fee of five hundred dollars for the applicant's first year for that site within fourteen days of when the applicant is notified by the lottery of its pending licensure. This fee is not prorated ~~and not~~ or refundable ~~on or after the date the vendor surveys the site for installing a terminal or telecommunications equipment at the site unless an applicant is disqualified according to section 10-16-02-03 before the applicant sells a ticket or a new owner purchases or leases a site and applies for a license before the former owner sells a ticket.~~ After the first partial or full year of licensure, the annual license renewal fee for the site is one hundred fifty dollars and is not prorated or refundable on or after October first.
3. If a licensed alcoholic beverage establishment and an organization that is licensed under North Dakota Century Code chapter 53-06.1 to conduct a game of chance at that site both ~~desire to~~ apply for a license for the site, the establishment has the first privilege ~~to apply.~~ If the establishment does not ~~desire to~~ apply and the organization does ~~desire to~~ apply for a license, the organization shall obtain written authorization from the establishment and provide the authorization with the application. If the organization is issued a license, the establishment's authorization is valid as long as the organization is licensed to conduct a game of chance at that site.
4. A license allows a retailer to sell a ticket for all authorized games.
5. The lottery may license a retailer on a seasonal basis or temporary basis for a special event. A special event is an infrequent, significant, and identifiable activity in the community, such as a fair. The director of the lottery may waive the license fee for a temporary site for a presently licensed retailer that sells tickets on a temporary basis at a site for a special event.

6. The lottery may issue a conditional license to an applicant, shall designate the time period for which the license is valid, and may impose any conditions related to:
 - a. Determining whether an applicant or retailer is eligible for a license;
 - b. Issuing a license to an applicant or retailer whose regular license has been relinquished, suspended, or revoked;
 - c. Applying a minimum sales ~~program~~ quota on an applicant or retailer; ~~or~~
 - d. Requiring an applicant or retailer to reimburse the lottery for the lottery's net cost of installing and maintaining the terminal and telecommunications equipment at a business if the applicant or retailer does not meet or maintain a mutually agreed minimum sales ~~program~~ quota; ~~or~~
 - e. Accessibility of a retailer to an individual who is disabled.
7. A license is a privilege and an applicant or retailer does not have a vested or legal right to the license.
8. Except as provided by subsection 5, an applicant's site must be a permanent business location.
9. The lottery may require a security deposit from an applicant or retailer.
10. If required by law, an applicant must be currently registered with the secretary of state.
11. A license may not be sold, transferred, assigned, pledged, or otherwise conveyed from a retailer to another person.
12. A retailer shall provide the lottery a thirty-day written notice of the retailer's intent to sell or otherwise transfer ownership of the retail business to another person. The acquiring person shall apply for a new license for that site if the person desires to be a retailer.
13. If a license becomes lost or destroyed, a retailer shall apply for a duplicate license and explain to the lottery what happened to the original license.

14. If the lottery denies an applicant a license, the lottery shall notify the applicant and state the reason for the denial.

History: Effective February 1, 2004; ~~amended effective April 1, 2006.~~

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-09, 53-12-10, 53-12-11, 53-12-14, 53-12-15, 53-12-16, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

10-16-02-02. Criteria for selecting an applicant. The lottery shall consider criteria in selecting an applicant for licensure or relicensure as a retailer, including:

1. Geographic or strategic location of a business in a town, city, or community, and its location in relation to population, highways, and traffic patterns;
2. Accessibility of a business to the public and an unrestricted public access policy;
3. Regular contact with a significant number of persons and the average number of customer sales transactions per day;
4. Normal business hours and days of the week that the business is open;
5. Number of years the business has been operating at its present location;
6. Historical gross sales of nonlottery products or expected gross sales of lottery tickets of a business, or both;
7. Physical security of a business, safety of the money derived from selling a ticket, and whether the business has a video surveillance or alarm system;
8. Financial condition, financial responsibility, and creditworthiness of the business;
9. Criminal history record, character, and reputation of the applicant's agent;
10. Sufficiency of an existing retailer to serve the public convenience in an applicant's town, city, or community;
11. Anticipated or proven capability of a business to best serve the public interest by actively promoting the sale of a ticket, including displaying ~~and~~ or providing point-of-sale promotional items to the public;
12. Initial or incremental cost of installing and maintaining a terminal and telecommunications equipment at a business or difficulty of using preferred telecommunications equipment;

13. Type of business and type of product, service, or entertainment offered at a site and whether it is acceptable to the general public; and does not adversely impact the credibility, reputation, or image of the lottery; and not compete with the lottery's product. An applicant's primary retail business may not be to sell a lottery ticket. An eligible applicant may not be a pawnbroker, bank, check cashing or cash advance outlet, currency exchange business, credit union, consumer finance company, collection agency, or mortgage broker;
14. Type and volume of state government services available at a business, including fishing and hunting licenses;
15. ~~Recommendations~~ Recommendation of the ~~vendor of the~~ lottery's online gaming system and services vendor;
16. Accessibility of a business to a person who is disabled;
17. Type of building housing the business; and
18. Site inspection.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-09, 53-12-13, 53-12-14, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

10-16-02-03. Record and credit checks.

1. An applicant for a license shall request the lottery to do a North Dakota record check on the applicant's agent ~~of the business~~. The record check is to determine whether the person has a criminal history record that would disqualify the applicant for a license according to subdivision ~~b~~ d of subsection ~~4~~ 3 of North Dakota Century Code section ~~53-12-13~~ 53-12.1-07. The lottery may require fingerprints of the person. After the initial licensure of an applicant, the retailer shall request the lottery to do a North Dakota record check and, if necessary, an out-of-state record check, on a new applicant's agent within thirty days of when the change occurred. The lottery may periodically do a followup record check on an applicant's agent and charge a fee.
2. If the applicant's agent resides or has resided in a state other than North Dakota during the previous five years, the lottery shall do an out-of-state record check on that person through the other state. The person shall procure any necessary fingerprint card or special authorization form, or both, which is or are required by the other state from the lottery and return the completed card or form, or both, to the lottery within ten days after receiving it or them from the lottery.

3. An applicant shall request a record check on the applicant's agent by submitting a "lottery record/credit check" form for the applicant's agent and remit a nonrefundable fee in the amount prescribed by North Dakota Century Code section 12-60-16.9 for a North Dakota record check and, if an out-of-state record check is required, remit the nonrefundable fee that is charged by the other state, to the lottery. The applicant shall remit the fee with the license application or form. However, if the person has had a record check done within one year of when the applicant applied for a license or renewal license and provides with the application a copy of the "lottery record/credit check" or similar form and, if applicable, a copy of the bureau of criminal investigation's criminal history record information the lottery may waive the requirement for a record check on that person.
4. A person's information on a criminal record may be disseminated only according to North Dakota Century Code chapter 12-60.
5. If an applicant's agent pleads guilty to or has been found guilty of a felony or misdemeanor offense as defined by the laws of this state, another state, or the federal government, the retailer shall immediately notify the lottery. Upon notification of a felony offense to the lottery:
 - a. If the applicant's agent is a general manager, the retailer shall terminate the general manager from employment;
 - b. If the applicant's agent is a partner of a partnership, the retailer shall terminate the partnership agreement with the affected partner;
 - c. If the applicant's agent is an officer or director who is primarily responsible for financial affairs of a corporation, the retailer shall delegate that responsibility away from the affected officer or director;
 - d. If the applicant's agent is a shareholder of a corporation, the retailer shall arrange for the shareholder to sell shares of stock to reduce the stock holding to less than ~~five~~ ten percent of the common stock; or
 - e. The lottery shall suspend or revoke the retailer's license or take any other appropriation action.
6. The lottery shall do a credit check on an applicant that is a sole proprietorship, partnership, or corporation through a credit-reporting company or other reliable source to determine the applicant's financial condition and whether the applicant is financially responsible and credit worthy. The lottery shall prescribe the fee for a credit check. The fee is nonrefundable. ~~The applicant shall remit the fee with the initial license application.~~ The lottery may periodically do a followup credit check on a retailer and charge the fee.

7. A retailer shall retain a copy of the "lottery record/credit check" form for three years from the date it submitted the form to the lottery.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-09, 53-12-13, 53-12-14, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

10-16-02-04. Change in business location, ownership, or name.

1. If a retailer changes its business location, the lottery may reissue a license to the retailer to sell a ticket at the new ~~business~~ location provided:
 - a. The retailer notifies the lottery, in writing, thirty days before the change is to occur ~~and explains the reason for the change;~~
 - b. The retailer stops ~~operating its retail business~~ selling a ticket at the old business location before it begins ~~operating its retail business~~ selling a ticket at the new business location; and
 - c. The lottery determines that reissuing a license to the retailer for the new business location would best serve the public convenience.
2. If a retailer changes the type of its business ownership, ~~including sole proprietorship, or from a sole proprietorship to a partnership or corporation,~~ it shall notify the lottery in writing and apply for a new license thirty days before the change is to occur.
3. If a retailer changes the name of the business, it shall notify the lottery in writing thirty days before the change is to occur.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-09, 53-12-11, 53-12-12, 53-12-13, 53-12-14, 53-12-15, 53-12-16, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

10-16-02-05. ~~Required training~~ Training. An employee of a retailer who is responsible for and who has no previous experience operating a terminal must be trained on how to properly operate the terminal by the retailer, ~~field representative of a vendor,~~ or lottery representative before the employee may sell or redeem a ticket. ~~The lottery or vendor shall prescribe the scope of the training.~~ The lottery

shall provide the retailer with a placard containing the relevant provisions of the law and rules for employees to read and reference.

History: Effective February 1, 2004; ~~amended effective April 1, 2006.~~

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-09, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-07, 53-12.1-13

10-16-02-06. Duties. A retailer shall:

1. Comply with the lottery law, rules, ~~directive, instruction, guideline~~ promotional rules, and terms of a license agreement prescribed by the lottery;
2. Display a lottery license in an area visible, but not accessible, to the public where a ticket is sold and redeemed. A retailer shall prominently display ~~and make available to the public~~ signage and promotional and point-of-sale items ~~and post a customer display sign~~ provided by the lottery. A retailer may advertise and use ~~or, display, or make available~~ other appropriate promotional and point-of-sale items. On request of the lottery, a retailer shall discontinue an advertisement or promotion that the lottery determines is in noncompliance with subsections 2 and 3 of section 10-16-01-02;
3. Display a ~~brochure on problem gambling and helpline telephone~~ number;
4. Provide a secure operating space for a terminal ~~and printer~~ at a location approved by the lottery or its online gaming system vendor. A retailer may not move the terminal to a different location at a ~~retail~~ site without written authorization from the lottery. If the retailer desires to have the terminal relocated at the site, only a qualified representative of the ~~lottery or~~ lottery's online gaming system vendor may relocate the terminal ~~and the retailer is responsible for all associated costs~~;
5. Provide dedicated alternating current to a duplex electrical receptacle for lottery equipment, including a terminal. Only lottery equipment may be on the circuit. A retailer shall pay the installation cost of the receptacle and monthly costs of electricity to operate the lottery equipment. The lottery shall provide the retailer with a schematic of the required amperage, voltage, and wiring of the receptacle;
6. As requested by the lottery, have ~~employees~~ an employee attend a training session sponsored by the lottery ~~or vendor~~, review training material, complete a terminal-based tutorial, or notify the lottery if a new employee needs training on operating a terminal;
7. Exercise care in operating a terminal and immediately notify the lottery's online gaming system vendor ~~and lottery by telephone~~ of a terminal

- malfunction, including the issuance of an invalid ticket, inability to sell or redeem a ticket, and nonissuance of a ticket. Except to clear a paper jam, the retailer may not perform mechanical or electrical maintenance on the terminal. ~~The retailer is responsible for a loss of or damage to the terminal.~~ Unless approved by the lottery or vendor, a retailer may not attach or adhere any stickers, decals, or advertisements on a terminal;
8. Replace ticket stock and clear a paper jam as necessary in a terminal;
 9. Monitor the supply of game brochures, point-of-sale items, ticket stock, and play slips and notify the lottery or its online gaming system vendor when an item is in short supply;
 10. Actively promote and sell a ticket and redeem a winning ticket during the retailer's ~~normal~~ core business hours on the days that the retailer is open and when a terminal is operating. If the retailer's ~~normal~~ core business hours are earlier or later, or both, than the hours that the terminal is operating, the retailer shall post the hours during which a person may redeem a winning ticket;
 11. Actively promote the sale of subscriptions;
 12. Prohibit a person under age eighteen from buying a ticket or redeeming a winning ticket;
 - ~~42:~~ 13. Not extend credit to a player or accept a credit card from a player for the purchase of a ticket or accept a food stamp or food coupon as consideration for a ticket. A player shall pay for a ticket when the ticket is bought from a retailer. If a retailer delivers a ticket to a player's residence, the player shall prepay or pay for the ticket upon delivery. A retailer may not loan money to or accept a postdated check from a player;
 - ~~43:~~ 14. Maintain a level of ticket sales set by the lottery based on a minimum sales program;
 - ~~44:~~ 15. Be financially responsible and personally liable to the lottery for money derived from the sale of a ticket, less money related to a sales commission and money paid on a redeemed winning ticket. The retailer shall allow money from the sale of a ticket that is deposited by the retailer in a bank account to be transferred to the lottery by electronic funds transfer on a weekly basis or other period prescribed by the lottery;
 - ~~45:~~ 16. Store ticket stock ~~and~~ supplies for a terminal, and related equipment in a safe place to prevent loss, theft, or damage;

16. ~~17.~~ Prominently post the winning numbers for a draw and estimated grand prize of the next draw of a game where a ticket is sold as soon as reasonably possible after the draw for the game;
17. ~~18.~~ Redeem a winning ticket and pay a prize of up to five hundred ninety-nine dollars in cash or by business check, regardless of which retailer sold the ticket. The retailer may not charge a fee for redeeming a ticket and may not refuse to redeem a winning ticket sold by another retailer;
18. ~~19.~~ File a claim for credit for a printed defective ticket as prescribed by the lottery;
19. ~~20.~~ Permit an employee or agent of the lottery who has first shown proper identification to the retailer to review the retailer's accounting records and inspect, maintain, replace, or remove lottery equipment, supplies, ticket stock, or a record or recorded video from the site without prior notice during the retailer's normal hours of operation;
20. ~~21.~~ Notify the lottery in writing thirty days before ~~the change is to occur, if~~ there is a change of the bank account maintained for electronic funds transfer;
21. ~~22.~~ Make it convenient for the public to buy and redeem a ticket. A retailer may sell a ticket through a drive-up window;
22. ~~23.~~ Have a copy of the lottery law and rules at the site available near the terminal for review by any person;
23. ~~24.~~ Incur the loss from theft of a ticket or gift certificate;
24. ~~25.~~ Defend, indemnify, and hold harmless the lottery and state of North Dakota from any claim of any nature, including all costs, expenses, and attorney's fees, that may result from or arise out of an agreement with the lottery, except for a claim that results from or arises out of the state's sole negligence; ~~and~~
25. ~~26.~~ Upon revocation, relinquishment, or nonrenewal of a license, immediately return all lottery-related equipment and supplies, including unused ticket stock, and provide a final accounting of transactions to the lottery. The retailer is liable for money still owed the lottery; and
27. Maintain complete and accurate records and retain them for one year related to the sale and redemption of a lottery ticket. Records must include:
- a. Inventory log of the receipt and use of ticket stock; and

- b. Weekly terminal-issued reports of electronic funds transfers transactions.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

10-16-02-07. Sales commission and bonus.

1. The lottery shall credit a retailer's account for a:
 - a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer.;
 - b. A sales commission of five percent of the amount of an initial or renewal subscription sale that is transacted through the lottery on a subscription application form that is issued by the retailer's terminal or procured from the retailer with the retailer's license number on it. The retailer must be currently licensed when the subscription application form is processed by the lottery. There is no sales commission on the value of a prize on a winning subscription play that automatically extends a subscription period according to subdivision a of subsection 10 of section 10-16-03-08.1; and
 - c. A sales bonus for selling a ticket with a winning play, or for an initial or renewal subscription sale described by subdivision b, including an extended subscription period, that has a winning play, for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play and when the winning ticket or subscription play is validated. The sales bonus is payable to the retailer after the winning ticket is validated by the lottery. If the winning play for POWERBALL® has the power play option, the retailer's account must also be credited for an additional bonus as stated below:

<u>Prize</u>	<u>Bonus</u>	<u>Additional Bonus</u>
<u>POWERBALL®</u>		
<u>Grand prize</u>	<u>\$50,000</u>	<u>Additional \$50,000 with power play</u>
<u>\$200,000</u>	<u>\$2,500</u>	<u>Additional \$2,500 with power play</u>
<u>\$10,000</u>	<u>\$500</u>	<u>Additional \$500 with power play</u>
<u>HOT LOTTO®</u>		
<u>Grand prize</u>	<u>\$5,000</u>	
<u>\$10,000</u>	<u>\$500</u>	
<u>WILD CARD 2®</u>		

<u>Grand prize</u>	<u>\$2,000</u>
<u>\$5,000</u>	<u>\$250</u>
<u>2BY2®</u>	
<u>Grand prize</u>	<u>\$500</u>

2. The lottery may credit a retailer's account for a fixed or graduated sales commission or bonus for a special promotion, including power play, that the lottery conducts for a certain period of time based on parameters set by the lottery.

History: Effective February 1, 2004; amended effective January 1, 2006.

General Authority: NDCC ~~53-12-18~~, 53-12.1-13

Law Implemented: NDCC ~~53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-02-08. Bank account and electronic funds transfer.

1. A retailer shall maintain a bank account at a financial institution that is insured by the federal deposit insurance corporation, federal credit union association, or federal savings and loan insurance corporation, located in North Dakota, and that is capable of electronic funds transfer. This account may be a special or general account used for deposit of money derived from selling a ticket. The amount deposited must be sufficient to cover the amount due the lottery. This amount is generally computed as gross sales, less the retailer's sales commission and value of validated redeemed winning tickets. The retailer shall deposit the amount in the account within one banking day after the date of the sale by the retailer. The lottery may transfer the amount due to the lottery on a weekly basis or on demand by electronic funds transfer on a day specified by the lottery. If the day specified for the transfer is on a federal or state holiday, the transfer will be done on the following business day. The lottery may establish a payment term with a retailer to address a situation unique to that retailer. The retailer shall hold the money derived from selling a ticket in trust and in a fiduciary capacity for the lottery. The retailer is personally liable for the money owed the lottery and may not pledge the money in the account as collateral for a loan.
2. The lottery shall notify a retailer of the amount that is to be transferred from the bank account to the lottery before the electronic funds transfer occurs. A retailer shall notify the lottery of an error or dispute of the amount twenty-four hours before the transfer occurs.
3. A retailer shall pay the amount of a nonsufficient electronic funds transfer immediately by a certified or cashier's check or money order. If a nonsufficient funds transfer is not immediately covered, the lottery may assess the retailer a monetary fine, service charge, disable the terminal until the amount is paid ~~or the issue is resolved, or, and~~ suspend or revoke the retailer's license, ~~or take any combination of~~

~~these actions. The lottery may assess the retailer a service charge for the nonsufficient funds transfer.~~

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-07, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-02-09. Recordkeeping. ~~A retailer shall maintain complete and accurate records and retain them for one year related to the sale and redemption of a lottery ticket. Records must include:~~ Repealed effective April 1, 2006.

- ~~1. Inventory log of the receipt and use of ticket stock;~~
- ~~2. Daily terminal-issued signon information reports; and~~
- ~~3. Weekly terminal-issued reports of electronic funds transfer transactions.~~

History: ~~Effective February 1, 2004.~~

General Authority: NDCC ~~53-12-18~~

Law Implemented: NDCC ~~53-12-02, 53-12-18~~

10-16-02-10. Denial, suspension, or revocation of a license. The lottery may deny, suspend, or revoke a license if the applicant's agent has a disqualifying criminal history record or an applicant or retailer:

1. Obtained a license by failing to complete, failing to disclose information, or misrepresenting data on an application;
2. Violated a lottery law, rule, or term of a license agreement;
3. Failed to meet or maintain eligibility criteria for licensure;
4. Failed to file a required security deposit;
5. Changed the location of a retail business;
6. Failed to demonstrate financial responsibility or maintain a reasonable financial condition of the business, a check issued for payment of a prize on a winning ticket or an electronic funds transfer of money from a retailer's bank account to the lottery was dishonored for any reason, or is delinquent in remitting money owed to the lottery;
7. Filed for, or was involuntarily placed in, bankruptcy or receivership;
8. Acted in a manner or is involved in an activity at a site that is harmful to the public confidence in the integrity, reputation, or image of the lottery;

9. Experienced recurring theft or other negative incidents at the site that endangers the security of the lottery;
10. Failed to produce for review a record, document, or other item required by a lottery law, rule, or term of a license agreement;
11. Knowingly sold a ticket to or redeemed a winning ticket from a person under age eighteen;
12. Failed to properly redeem or pay a player the proper prize for a winning ticket play;
13. Failed to actively promote sales of tickets or properly display and provided point-of-sale promotional items to the public;
14. Failed to sell a minimum number of tickets as set by the lottery and another retailer adequately serves the public convenience; or
15. ~~Owes delinquent tax, interest, or penalty to this state, exclusive of an item under formal appeal according to statute; or~~
16. Failed to maintain an active federal employer identification number and, if necessary, North Dakota sales tax permit number.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-09, 53-12-10, 53-12-13, 53-12-14, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-09, 53-12.1-13

CHAPTER 10-16-03

10-16-03-01. Games authorized. The lottery may conduct online games of POWERBALL®, including the POWERBALL® power play promotion option, HOT LOTTO®, and WILD CARD 2®, and 2BY2® that are managed administered by the MUSL.

History: Effective February 1, 2004; amended effective November 8, 2005.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-04, 53-12-07, 53-12-18~~ 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-03-02. Ineligible player. A ticket issued by a retailer or a subscription may not be bought by, or a prize won by that ticket or subscription play may not be paid to:

1. An employee, officer, or director of a the lottery's online gaming system vendor, ~~other than a retailer, that provides equipment or services to the lottery related to the operation of a game~~ or the MUSL;
2. ~~An employee, officer, or director of the MUSL;~~
3. ~~A consultant under agreement with the MUSL to review the MUSL audit and security procedures;~~
4. ~~An employee of an independent accounting firm under license with the MUSL to observe drawings or site operations of the lottery and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm;~~
5. A parent, stepparent, child, stepchild, spouse, or sibling person who regularly resides in the same household of a person described in subsection 1, ~~2, 3, or 4;~~ or
- 6: 3. A minor; or
4. A person who is in the United States illegally.

History: Effective February 1, 2004; amended effective November 8, 2005.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-18, 53-12-25~~ 53-12.1-02, 53-12.1-08, 53-12.1-13

10-16-03-03. Play slip. A play slip for a game must contain information on:

1. How to play the game;
2. How to complete a play slip;

3. How to win, including the probability odds of winning a prize of each prize tier; and
4. ~~How to claim a prize; and~~
5. General rules, including:
 - a. Name of a game;
 - b. Ticket price;
 - c. Prize structure; and
 - d. Drawing day ~~and deadline for claiming a winning ticket.~~

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-18~~ 53-12.1-13

10-16-03-04. Multiple draw.

1. A player may buy a ticket for the next draw and for a number of subsequent draws as prescribed by the lottery. The player shall designate the number of multiple draws desired by marking that numbered multidraw box on a play slip. The additional draw for which the ticket is valid must be printed on the player's ticket.
2. A Except as provided by subsection 5 of section 10-16-03-05, a player shall pay the standard price per play for each additional draw.
3. Unless one of the multidraw boxes on a play slip is marked and the additional amount paid, the play will only be eligible for the next draw.
4. A player shall play the same numbers selected on a ~~game board~~ play area for multiple draws.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-18~~ 53-12.1-13

10-16-03-05. Sale or gift of a ticket.

1. Only a retailer may sell a ticket and only at the site listed on a license. The sales price of a ticket is exempt from sales tax. A Except as authorized by the lottery, sale of a subscription, or delivery of a ticket by a retailer, a complete sales transaction between the retailer and a player must occur at a terminal, including the exchange of money, exchange of a play slip if the player uses it, and exchange of the ticket. The retailer shall accept cash and a lottery gift certificate and may, at

its option, accept a check or debit card from a player. The retailer may not extend credit to a player or accept a food stamp or food coupon as consideration for a ticket. A player shall pay for a ticket when the ticket is bought from a retailer. A retailer may not loan money to a player or accept a postdated check from the player. A retailer is responsible for a check that is not collectible for any reason. This subsection does not prevent a person who may lawfully buy a ticket from giving a gift of the ticket to another person, or prevent a business or organization from purchasing a ticket and providing it as a gift or prize to a person. except to a person under age eighteen or an ineligible player according to section 10-16-03-02.

2. A person may buy a ticket on behalf of another person or group of people, provided that the person provides the ticket ~~on a nonprofit basis~~ without charging a procurement fee and the other person is not, or the group of people does not include, a person under age eighteen or an ineligible player according to section 10-16-03-02.
3. A Except for a subscription, a player shall place a play through a retailer who acts as an agent for the player in entering the play. The player shall place a play by using and hand-marking a play slip provided by the retailer or requesting the retailer to place a quick pick. ~~However, the~~ The retailer may assist and train a player how to complete a play slip. It is the sole responsibility of the player to verify the accuracy of a game play and other data printed on a ticket. The retailer may not use a copy of a play slip or other material in a terminal's play slip reader or permit any device to be connected to a terminal to enter a play.
4. A retailer shall use a terminal to issue a ticket containing the selected sets of numbers ~~and, for WILD CARD 2®, the card symbol,~~ letters, or symbols each set of which is a play. A retailer's sale of a ticket is final. A player may not void or cancel a ticket by returning the ticket to the retailer and the retailer may not buy back a ticket from a player. If data printed on a ticket is incorrect, a ticket is printed in error, an employee, volunteer, or agent of a retailer steals a ticket from the retailer, or if any other issued ticket can be used to claim a prize, the retailer cannot void or cancel the ticket or return the ticket to the lottery for credit. If the retailer cannot sell the ticket, the retailer owns the ticket and may redeem a winning ticket. However, the lottery may credit a retailer's account for a ticket that is illegible, mutilated, or otherwise defective as it was printed and that because of its physical condition cannot be sold. A retailer shall comply with ~~guidelines prescribed by a policy of~~ the lottery related to the frequency or other criteria for sending claims a claim for credit of a defective tickets ticket to the lottery. The retailer may not send a defective ticket to the lottery until after the draw for the game for which the ticket was issued.
5. A retailer shall sell a ticket only for the standard price of the ticket ~~as set by the MUSL.~~ However, ~~the lottery~~ a retailer may authorize do a

promotion for a period not to exceed ninety consecutive days in any six-month period ~~that allows in which~~ a retailer ~~to offer~~ offers a ticket for sale through a discount or other promotion provided that the retailer accounts for the standard price of the ticket to the lottery. A discount includes, for example, selling six tickets for the price of five tickets, selling two tickets for the price of one ticket, and selling a ticket for one-half price. A retailer ~~is not prohibited from buying~~ may buy a ticket for the standard price of the ticket and ~~offering~~ offer it, at no charge, to a person. A recipient of a ticket in a promotion may not be under age eighteen or an ineligible player according to section 10-16-03-02. A retailer may conduct other promotions, including:

- a. Second chance drawings of nonwinning tickets or other entry forms provided that a person may not be required to purchase anything to participate in the drawing:
 - b. Giving away a ticket with the purchase of a product or service:
 - c. Giving away or discounting a product or service with the sale of a ticket or return of a number of nonwinning tickets; and
 - d. With the purchase of a ticket, a person may spin a wheel, for example, to select a free prize, product, or service.
6. A person who buys or accepts a ticket, attempts to redeem a ticket for a prize, or otherwise participates in a draw agrees to comply with and abide by the lottery law, rules, procedures, policy, MUSL or product group rule or game rules rule, and decision of the lottery.
7. A person who buys or accepts a ticket, attempts to redeem a ticket for a prize, or otherwise participates in a draw agrees to accept the decision of the lottery regarding the validity of the ticket, and any prize payment determinations relating to that ticket, and to release the state, lottery, the MUSL, ~~the MUSL's product groups group~~, and their officers, employees, agents, representatives, and contractors from any liability regarding that ticket or payment of that prize and are not responsible or liable for:
- a. A lost or stolen ticket or incorrectly read play slip; or
 - b. Paying a prize related to a damaged, destroyed, erroneous, illegible, or mutilated ticket.

History: Effective February 1, 2004; amended effective November 8, 2005.

General Authority: NDCC ~~53-12-48~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-12, 53-12-18, 53-12-22, 53-12-23, 53-12-24, 53-12-25,~~ 53-12.1-02, 53-12.1-03, 53-12.1-07, 53-12.1-08, 53-12.1-13, 57-39.2-04

10-16-03-06. Ownership of a ticket.

1. Until a person, including a group of people, places a signature in the designated area on the back of a ticket, the person who is the ticket holder is the owner of the ticket. When a signature is placed in the designated area on the back of a ticket, the person whose signature is shown is the owner of the ticket and entitled to a prize, subject to validation, regardless of who redeems or attempts to redeem the ticket. However, a player is not required to sign or complete the backside of the ticket to redeem it.
2. The lottery is not liable for nor has a responsibility to resolve a conflict between competing claimants or joint owners of a ticket or prize. The lottery may, at its discretion, address or resolve a conflict on a ticket.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-18, 53-12-26~~ 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

10-16-03-07. Validation of a ticket.

1. A retailer shall use a terminal to validate a ticket before the retailer may pay a prize on the ticket. A retailer that pays a player a prize without first validating the ticket assumes the financial risk that the ticket is not an actual winning ticket or the ticket was previously redeemed. The lottery may not reimburse a retailer for a prize paid in error by the retailer. A ticket that does not pass validation is invalid and ineligible for a prize. A An original ticket is the only proof of a game play and submitting a winning ticket to the retailer or lottery is the only method of claiming a prize. A play slip or copy of a winning ticket has no monetary or prize value and is not evidence of a ticket bought or of numbers selected for a draw. A ticket must have been bought from a North Dakota retailer and meet all of these validation requirements:
 - a. A retailer must have issued the ticket in an authorized manner;
 - b. The play, including the combination of numbers, letters, or symbols selected by a player or quick picked, evidenced by the ticket, must reach and be accepted and recorded by the lottery's online gaming system before the cutoff time for a draw. The draw for a game is held ~~each Wednesday and Saturday or other~~ on the days as determined by the MUSL or lottery product group. Even if a player intends for a retailer to enter the player's play before the cutoff time for the present draw, the play is only eligible for the draw that is printed on the ticket;
 - c. The ticket must not have been previously paid or voided by the lottery;

- d. The ticket must not have been stolen, or be counterfeit, altered, mutilated, reconstructed, unreadable, illegible, irregular, partly blank, incomplete, defective, or an exact duplicate of another winning ticket. The product group, the MUSL, and lottery are not responsible for a ticket that is altered in any manner;
 - e. A ticket is void unless the ticket is printed on a paper stock roll that was validly issued to and used by the retailer that sold the ticket;
 - f. The ticket validation number must be legible, intact, presented in its entirety, and correspond, based on the lottery's computer validation file, exactly to the date and selected numbers printed on the apparent winning ticket that was sold at a specific site;
 - g. The ticket may not be marked in any way, except by a player to place a signature on the back side of the ticket to claim a prize or by a retailer to deface or void the ticket after it was redeemed, with the intent to commit fraud;
 - h. If the total prize or value of all plays of a winning ticket is six hundred five thousand dollars or more, the ticket must pass a confidential security check by the lottery;
 - i. Upon request by the lottery, a claimant of an apparent winning ticket shall disclose to the lottery the name of the retailer from whom the claimant bought the ticket, date of purchase, and approximate time; and
 - j. A validation requirement adopted by the MUSL or product group or board.
2. After a retailer validates a winning ticket, the retailer shall if sufficient funds are available, pay the player the prize value and. However, a retailer shall redeem a winning ticket that has a prize value of fifty dollars or less. A retailer may deface or tear up the winning ticket and discard it or retain the ticket or terminal receipt, or both, for recordkeeping purposes. After a retailer validates a nonwinning ticket, the retailer shall return the nonwinning ticket and terminal receipt to the player. The player may discard a nonwinning ticket or terminal receipt, or both.
 3. The lottery shall credit a retailer's account for a prize actually paid by the retailer on a validated redeemed winning ticket.

4. The lottery's determination on a contested validation is final.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-18, 53-12-20, 53-12-22, 53-12-23, 53-12-26~~ 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

10-16-03-08. Claim of a prize. A prize for a validated winning ticket must be claimed as follows:

1. No prize may be awarded nor is the lottery liable for a ticket not submitted for validation or for an announcement or dissemination by the lottery or any other person of an incorrect number, letter, or symbol drawn.
2. A ticket bought or used to claim a prize in violation of federal or state law, or bought in violation of the lottery law or rules, is void and may not be used to claim a prize.
3. A ticket ~~must be redeemed~~ for a prize must be actually received or, if mailed, postmarked, within one hundred eighty days after the date of a draw for the game for which the ticket was issued. If the final day of the claim period is a Saturday, Sunday, or state holiday, the claim period is extended to the next business day. Except for the grand prize of a game, an unclaimed prize is forfeited and retained by the lottery. If the grand prize is unclaimed, the MUSL shall administer the prize money.
4. A person who owns or redeems a winning ticket:
 - a. Agrees to be bound by the lottery law, rules, procedure, policy, validation requirements, dispute resolution, and product group game rules related to the game for which the ticket was issued; and
 - b. Agrees that the state, lottery, ~~other state lottery that may share resources with or provide services to the lottery~~, the MUSL, its ~~product groups~~ group, and their officers, employees, agents, representatives, and contractor are discharged from any liability upon payment of a prize on a ticket.
5. The owner of a winning ticket may win only one prize per ticket play for the winning numbers, letters, or symbols drawn and is entitled only to the prize won by those numbers in the highest matching prize category.
6. A retailer may redeem a ticket only at the business address listed on the license. The retailer may pay a prize in cash or by business check, certified or cashier's check, money order, or combination of methods.

7. A person may redeem a winning ticket for a prize only during the normal business hours of a retailer provided that the lottery's online computer system is operating and a ticket may be validated. If the retailer is normally open for business before or after the hours when the lottery's on-line computer system operates, the retailer shall post the hours at the site when a person may redeem a ticket.
8. To claim a prize for an apparent winning ticket of less than six hundred dollars, a player may:
 - a. Present the ticket to a retailer, regardless of which retailer sold the ticket; or
 - b. Complete the back side of the ticket by entering the person's full name and address and signing the ticket, and present or mail the ticket to the lottery's office.
9. If a ticket has a prize value of less than six hundred dollars, is owned by one person, and is presented to a retailer, the retailer may pay the prize to the person who physically possesses an unsigned ticket or to the person whose signature is shown on the ticket. If a person desires to redeem a winning ticket that is signed, the retailer shall request evidential proof of identity from the player before the retailer may validate or pay the prize. If the player does not provide proof of identity, the retailer may not validate the ticket or pay the player a prize and shall return the ticket to the player. For an unsigned ticket or a signed ticket in which the ticket holder is the identified owner, the retailer shall validate the ticket and, for a winning ticket, pay the prize to the player. If the retailer is unable to validate a ticket, the retailer shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery.
10. If an apparent winning ticket has a total prize value of all plays of six hundred dollars or more and one person signed or claims ownership of the ticket, a retailer shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery. The ticket holder shall complete and sign the form and back side of the ticket and present or mail the form and ticket to the lottery. For a validated winning ticket, the lottery shall present or mail a check to the player for the amount of the prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. The lottery shall pay the prize to the person whose name is on the ticket, notwithstanding the name on the claim form. For a nonwinning ticket, the lottery shall deny the claim, notify the claimant, and retain return the ticket.
11. If more than one person signed or claims ownership of an apparent winning ticket, the retailer shall provide the claimant with a prize claim

form and instruct the claimant how to file a claim with the lottery, as follows:

- a. Each person who claims part ownership of the ticket must complete and sign the prize claim form and designate the person's percentage of ownership and, if subdivision d applies, the one authorized payee;
 - b. At least one of the people who claim ownership must sign the ticket and that signature must be on the prize claim form;
 - c. The prize claim form and ticket must be presented or mailed to the lottery;
 - d. For a validated ticket, if the amount of the prize allocated to each claimant is six hundred dollars or more, the lottery shall present or mail a separate prize check to each claimant. The lottery shall present or mail a check to each claimant for the amount of each player's prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. If the prize allocated to each claimant is less than six hundred dollars, the lottery shall issue a single prize check to the person designated and authorized on the prize claim form to receive payment of the prize on behalf of all the claimants; and
 - e. Notwithstanding subdivision d, if the claimants desire to designate one person in whose name the entire claim may be made and list the persons to whom the winnings are taxable, the claimants may file, along with a claim prize form, internal revenue service form 5754 (statement by person(s) receiving gambling winnings) with the lottery.
12. The lottery shall pay a prize to a player within a reasonable time after the player's winning ticket is validated by the lottery.
 13. If Except as provided by rule, if two or more tickets ~~plays~~ win the grand prize, the prize money must be divided equally among the players whose tickets won. Except as provided by rule, for a ~~low-tier set~~ prize, each player wins the set amount of a prize regardless of whether two or more players have winning tickets for the prize.
 14. The lottery is not liable for a ticket not delivered to the correct address of the lottery or a delay in delivery of a ticket or damage to a ticket while being delivered to the lottery.
 15. A player who redeems a winning ticket is solely responsible for any federal or state income tax liability related to the prize.

16. A person's right to a prize is assignable and payment of a prize may be made to a person pursuant to an appropriate judicial order.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-02, 53-12-04, 53-12-18, 53-12-20, 53-12-26~~
53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

10-16-03-08.1. Subscription.

1. A player may procure a subscription application form from a retailer, lottery's office, or lottery's web site. A player may apply for a subscription on the lottery's web site.
2. A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for twenty-six, fifty-two, or one hundred four draws. A subscription is not refundable or cancelable by a player unless the product group makes a matrix change to the game at which time, at the player's option, the cost of the subscription would be prorated based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased.
3. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery. A player may use cash, check, debit card, or authorized credit card to pay for a subscription.
4. A person must be at least eighteen years of age.
5. A person must have a mailing address within the state of North Dakota when the original or renewal subscription application form was submitted to the lottery.
6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and MUSL security and integrity committee. All data on a subscriber is confidential.
7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery.
8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation card to the subscriber. The confirmation card is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation card must include:

- a. Name and address of the subscriber:
 - b. Assigned subscriber number:
 - c. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option:
 - d. Number of and starting and ending dates of the draws:
 - e. Numbers, letters, or symbols of the plays:
 - f. Notice that the subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and
 - g. Explanation of how a prize will be awarded.
9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified on the confirmation card. The effective date of a new subscription play cannot be sooner than fourteen days from the original date of subscription. The effective date of a renewal subscription play can begin with the next draw following the end of the current subscription.
10. If the value of a prize on a winning subscription play for a draw is:
- a. Five dollars or less, the lottery shall automatically extend the subscription period by the number of draws equal to the value of the winning play:
 - b. Equal to or more than six dollars and less than six hundred dollars, the lottery shall send the player a check for the prize; or
 - c. Equal to or more than six hundred dollars, the lottery shall contact the player to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.
11. If the owner of a subscription changes the owner's name or address, the owner shall provide the lottery with a notarized letter of the change. If the owner of a subscription dies, the lawful representative of the owner's estate shall provide the lottery with a notarized statement of the death

and the lottery shall change the ownership of the subscription to "The Estate of" the owner.

History: Effective November 8, 2005.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-01, 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

10-16-03-09. Payment of a prize to a person's estate. If a winning player dies during the annuity payment period of a prize ~~that is paid on an annuitized basis, the MUSL product group, in its sole discretion,~~ upon the petition of the estate of the deceased player to the lottery, ~~and subject to federal and state laws,~~ may accelerate the payment of all of the remaining lottery proceeds prize to the estate. The lottery may rely solely on a certified copy of a court's appointment of a personal representative or other evidence that a certain person is entitled to the payment of the remaining prize. If the product group approves the petition, then securities, cash, or both securities and cash held for the deceased player that represents the present value of that portion of a future lottery payment to be accelerated may be distributed to the estate. The identification of the security to fund the annuitized prize and responsibility for valuing the security and determining the present value of an accelerated lottery payment are at the sole discretion of the product group. Payment to the estate of the prize of the deceased owner releases the MUSL product group, lottery, and state of any additional liability for the prize.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC 53-12-18 53-12.1-13

Law Implemented: NDCC 53-12-18, 53-12-26 53-12.1-08, 53-12.1-13

10-16-03-10. Counterfeit or theft of a ticket or gift certificate.

1. A person may not make, alter, pass, counterfeit, or present, with intent to defraud, a ticket or gift certificate to a retailer or lottery.
2. A person may not steal a ticket or gift certificate or knowingly possess, redeem, or attempt to redeem a stolen ticket or gift certificate.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC 53-12-18 53-12.1-13

Law Implemented: NDCC 53-12-18, 53-12-22 53-12.1-08, 53-12.1-13

10-16-03-12. Delay of paying a prize. The lottery may delay paying a prize to a player to review a change in a circumstance related to the award of a prize, payee, claim, or other item that the lottery has become aware of, including if:

1. A dispute occurs or appears that a dispute may occur related to a prize;
2. The identity of a claimant is questionable;
3. The validity of a ticket presented as a claim is questionable; or

4. A claim for a prize is subject to a debt setoff according to section 10-16-01-03 or North Dakota Century Code section ~~53-12-30~~ 53-12.1-12.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-18, 53-12-20, 53-12-26, 53-12-29, 53-12-30, 53-12-31, 53-12-33, 53-12-34~~ 53-12.1-08, 53-12.1-12, 53-12.1-13

CHAPTER 10-16-04

10-16-04-01. Game description. To play POWERBALL®, a player selects five different white numbers, between one and ~~fifty-three~~ fifty-five, and one additional red number (powerball) between one and forty-two. The additional number may be the same as one of the first five numbers selected. The price of a ticket play is one dollar. A grand prize is paid, at the election of a winning player or by a default election made according to these rules, either on an annuitized parimutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a parimutuel basis. A ~~low-tier set~~ prize (cash prize of two hundred thousand dollars or less) is paid on a single-payment cash ~~set-prize~~ basis. Draws are held every Wednesday and Saturday.

History: Effective February 1, 2004; amended effective November 8, 2005.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-18~~ 53-12.1-13

10-16-04-02. Expected prize payout pool percentages and odds. A The minimum grand prize must be determined is fifteen million dollars and is paid on a parimutuel basis. Except as provided by rule, a low-tier set prize must be paid as a set prize according to these matches per play and prize amounts with these expected prize payout percentages:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>
All 5 of first set plus 1 of second set	Grand Prize	65.3378%*
All 5 of first set and none of second set	\$100,000	6.8035%
Any 4 of first set plus 1 of second set	\$5,000	1.9913%
Any 4 of first set and none of second set	\$100	1.6328%
Any 3 of first set plus 1 of second set	\$100	1.8718%
Any 3 of first set and none of second set	\$7	5.3720%
Any 2 of first set plus 1 of second set	\$7	2.0090%
Any 1 of first set plus 1 of second set	\$4	6.4577%
None of first set plus 1 of second set	\$3	8.5241%

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds**</u>
<u>5 white + 1 red</u>	<u>Grand prize</u>	<u>60.58%*</u>	<u>1:146,107,962</u>
<u>5 white + 0 red</u>	<u>\$200,000</u>	<u>11.22%</u>	<u>1:3,563,609</u>
<u>4 white + 1 red</u>	<u>\$10,000</u>	<u>3.42%</u>	<u>1:584,432</u>

<u>4 white + 0 red</u>	<u>\$100</u>	<u>1.40%</u>	<u>1:14,254</u>
<u>3 white + 1 red</u>	<u>\$100</u>	<u>1.68%</u>	<u>1:11,927</u>
<u>3 white + 0 red</u>	<u>\$7</u>	<u>4.81%</u>	<u>1:291</u>
<u>2 white + 1 red</u>	<u>\$7</u>	<u>1.88%</u>	<u>1:745</u>
<u>1 white + 1 red</u>	<u>\$4</u>	<u>6.31%</u>	<u>1:127</u>
<u>0 white + 1 red</u>	<u>\$3</u>	<u>8.70%</u>	<u>1:69</u>

Overall odds of winning a prize on a one dollar play are 1:36.6.

*When the grand prize reaches a new high level, the prize pool percentage allocated to the grand prize must be reduced to the percentage needed to fund the maximum grand prize increase as determined by the MUSL product group, with the remainder funding the match 5 bonus prize category. ~~The match 5 bonus prize does not include the original amount declared for the match 5 bonus prize.~~

- ~~1. The prize money allocated to the grand prize category must be divided equally by the number of tickets that win the grand prize.~~
- ~~2. The prize pool percentage allocated to the set prizes, cash prizes of one hundred thousand dollars or less, must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of the set prizes awarded in a draw exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded must be drawn from these sources, in this order:

 - ~~a. The amount allocated to the set prizes and carried forward from previous draws, if any.~~
 - ~~b. An amount from the product group's set prize reserve account, if available, not to exceed twenty-five million dollars per draw.~~~~

~~If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded, the highest set prize must become a parimutuel prize. If the amount of the highest set prize, when paid on a parimutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, the next highest set prize must become a parimutuel prize. This procedure must continue down through all set prize levels, if necessary, until all set prize levels become parimutuel prize levels. In that instance, the money available from the funding sources listed by this rule must be divided among the winning plays in proportion to their respective prize percentages.~~

- ~~3. The prize money allocated to the match 5 bonus prize must be divided equally by the number of tickets that win the match 5 prize when a ticket wins the new high jackpot amount.~~

**Reflects the odds of winning and probable distribution of winning tickets in and among each prize tier, based on the total number of possible combinations.

History: Effective February 1, 2004; amended effective November 8, 2005.

General Authority: NDCC 53-12-18 53-12.1-13

Law Implemented: NDCC 53-12-18 53-12.1-13

~~10-16-04-03. Probability of winning. The following table reflects the probability of winning, rounded to whole numbers, and probable distribution of winning tickets in and among each prize category, based on the total number of possible combinations: Repealed effective April 1, 2006.~~

Matches Per Ticket	Probability Distribution		Probable/Set Prize Amount
	Winners	Probability	
All 5 of first set plus 1 of second set	4	1:120,526,770	\$78,749,793
All 5 of first set and none of second set	44	1:2,939,677	\$100,000
Any 4 of first set plus 1 of second set	240	1:502,195	\$5,000
Any 4 of first set and none of second set	9,840	1:12,249	\$100
Any 3 of first set plus 1 of second set	11,280	1:10,685	\$100
Any 3 of first set and none of second set	462,480	1:261	\$7
Any 2 of first set plus 1 of second set	172,960	1:697	\$7
Any 1 of first set plus 1 of second set	972,900	1:124	\$4
None of first set plus 1 of second set	1,712,304	1:70	\$3
Overall probability of winning a prize	3,342,046	1:36	

~~The grand prize amount is estimated using a thirty-payment (thirty payments over twenty-nine years) deferred payment factor of 2.0. The amount does not include the prize reserve account deduction or any other deductions, if any.~~

~~**History:** Effective February 1, 2004.~~

~~**General Authority:** NDCC 53-12-18~~

~~**Law Implemented:** NDCC 53-12-18~~

10-16-04-04. Prize pool and payment.

1. ~~The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize reserve account is funded to the amount set by the product group. Any amount remaining in the prize pool at the end of a game must be carried forward to a replacement game or expended in a manner as directed by the product group according to the lottery law.~~

2. ~~Up to two percent of the lottery's sales must be deducted from the lottery's grand prize pool and placed in trust in a prize reserve account until the lottery's share of the prize reserve account reaches the amounts designated by the product group. When the lottery's share of the prize reserve account exceeds the designated amounts, the excess shall become part of the grand prize pool. The product group, with approval of the MUSL finance and audit committee, may establish a maximum balance for the prize reserve account. The product group may expend all or a portion of the funds in the account to pay prizes or special prizes in the game. The shares of the lottery may be adjusted with a refund to the lottery from the prize reserve account as may be needed to maintain the approved minimum balance and shares of the lottery. Any amount remaining in a prize reserve account at the end of the game must be carried forward to a replacement prize reserve account or expended in a manner as directed by the product group according to the lottery law.~~ The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the product group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw. If a new high grand prize is not won in a draw, the prize money allocated for the match 5 bonus prizes must roll over and be added to the match 5 bonus prize pool for the next draw.

3. When the grand prize reaches a new high annuitized amount, the maximum amount to be allocated to the grand prize pool is an additional twenty-five million dollars (annuitized) or an amount set by the product group. Any amount of the grand prize percentage that exceeds the twenty-five million dollar (annuitized) increase must be added to the match 5 bonus prize pool. The match 5 bonus prize pool is created, and must accumulate until the grand prize is won, at which time the match 5 bonus prize pool must be divided equally by the number of plays that win the match 5 prize. If there is no match 5 winning play on the draw when the new high grand prize is won, the match 5 bonus prize pool must be divided equally by the number of plays that win the match 4+1 prize.

4. If there are multiple grand prize winning plays during a draw, each player selecting the annuitized option prize, then a winning play's share of the guaranteed annuitized grand prize must be determined by dividing the guaranteed annuitized grand prize by the number of winning plays.

5. The prize money allocated to the match 5 bonus prize must be divided equally by the number of plays that win the match 5 prize when a play wins the new high grand prize amount.
6. A grand prize must be paid, at the election of the winning player made within sixty days after the player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made by the player within sixty days after the player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a player may be changed to a cash payment at the election of the player until the expiration of sixty days after the player becomes entitled to the prize. Otherwise, the payment election is final. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning plays of the grand prize. A player who elects a cash payment must be paid the share in a single cash payment. A player who elects an annuitized prize must be paid annually in thirty graduated payments with the initial payment being made in cash, followed by twenty-nine payments (increasing each year) by a rate determined by the product group funded by the annuity. Annual payments after the initial payment must be made by the lottery on the anniversary date or if this date falls on a nonbusiness day, then the first business day following the anniversary date of the draw of the grand prize winning numbers.
7. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.
8. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

History: Effective February 1, 2004; amended effective November 8, 2005.

General Authority: NDCC 53-12-18 53-12.1-13

Law Implemented: NDCC 53-12-18 53-12.1-13

10-16-04-05. Prize payment. Repealed effective April 1, 2006.

- ~~4. A grand prize must be paid, at the election of the winning player made within sixty days after the winning player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made when there is a purchase and is not made by the winning player within sixty days after the winning player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a winning player before a ticket is bought or by system default or design may be changed to a cash payment at the election of the winning player until the expiration of sixty days after the winning player becomes entitled to the prize. The~~

~~election to take the cash payment may be made when there is a prize claim or within sixty days after the winning player becomes entitled to the prize. An election made after the winning player becomes entitled to the prize is final and cannot be revoked, withdrawn, or otherwise changed. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning players of the grand prize. A winning player who elects a cash payment must be paid the share in a single cash payment. The annuitized option prize must be determined by multiplying a winning player's share of the grand prize pool by the MUSL annuity factor. Neither the MUSL nor the lottery is responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to the MUSL. In certain instances announced by the product group, the grand prize must be a guaranteed amount and must be determined pursuant to subsection 5. If individual shares of the cash held to fund an annuity are less than two hundred fifty thousand dollars, the product group, in its sole discretion, may elect to pay the winning player the share of the cash held in the grand prize pool. An annuitized prize must be paid annually in thirty equal payments with the initial payment being made in cash, to be followed by twenty-nine payments funded by the annuity. Annual payments after the initial payment must be made by the lottery on the anniversary date or if this date falls on a nonbusiness day, then the first business day following the anniversary date of the selection of the jackpot winning numbers. Funds for the initial payment of an annuitized prize or the lump sum cash prize must be made available by the MUSL for payment by the lottery no earlier than the fifteenth calendar day, or the next banking day if the fifteenth day is a holiday, following the draw. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the party lotteries. The lottery may make the initial payment from its own funds after validation, with notice to the MUSL.~~

- ~~2. The lottery shall pay a low-tier cash prize for a draw after it receives authorization from the MUSL.~~
- ~~3. An annuitized payment of the grand prize or a share of the grand prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized grand prize win must be added to the first cash payment to the winning player. A low-tier prize that under these rules may become a single-payment parimutuel prize may be rounded down so that the prize can be paid in multiples of whole dollars. Breakage that results from rounding the prize must be carried forward to the prize pool for the next draw.~~
- ~~4. If the grand prize is not won in a draw, subject to any restrictions by the product group, the prize money allocated for the grand prize must~~

~~roll-over and be added to the grand prize pool for the next draw. For POWERBALL®, if a new high grand prize is not won in a draw, the prize money allocated for the match 5 bonus prizes must roll over and be added to the match 5 bonus prize pool for the next draw.~~

- ~~5. The product group may offer a guaranteed minimum grand prize amount or minimum increase in the grand prize amount between draws or make other changes in the allocation of prize money when the product group determines that it would be in the best interest of the game. If the product group offers a minimum grand prize amount or a minimum increase in the grand prize amount between draws, the grand prize shares must be determined as follows. If there are multiple grand prize winning players during a single drawing, each selecting the annuitized option prize, then a winning player's share of the guaranteed annuitized grand prize must be determined by dividing the guaranteed annuitized grand prize by the number of winning players.~~
- ~~6. When the grand prize reaches a new high annuitized amount, through a procedure determined by the product group, the maximum amount to be allocated to the grand prize pool from the grand prize percentage must be the previous high annuitized amount plus twenty-five million dollars (annuitized) or an amount otherwise set by the group. Any amount of the grand prize percentage that exceeds the twenty-five million dollar (annuitized) increase must be added to the match 5 bonus prize pool. The match 5 bonus prize pool is created, and must accumulate until the grand prize is won, at which time the match 5 bonus prize pool must be divided equally by the number of tickets that win the match 5 prize. If there is no match 5 winning ticket on the draw when the new high grand prize is won, the match 5 bonus prize pool must be divided equally by the number of tickets that win the match 4+1 prize.~~

History: ~~Effective February 1, 2004.~~
General Authority: ~~NDCC 53-12-18~~
Law Implemented: ~~NDCC 53-12-18~~

10-16-04-06. POWERBALL® power play promotion.

- ~~1. The POWERBALL® power play promotion is a limited extension of the POWERBALL® game and is conducted according to the POWERBALL® product group's game rules and other applicable rules. The promotion will be conducted at the discretion of the lottery. The promotion offers to the owner of a qualifying play a chance to multiply the amount of any of the eight lump sum a set prizes. The lump sum prize normally pays three dollars to one hundred thousand dollars won in a draw. The grand prize is not a set prize and cannot be multiplied prize. A match 5 bonus prize is awarded independent of the power play option and is not multiplied by the power play multiplier.~~

2. A qualifying play is a single POWERBALL® play for which the player pays an extra one dollar for the power play option play and which is recorded at the lottery's on-line central computer as a qualifying play.
3. A qualifying play which wins one of the eight lump sum set prizes will be multiplied by the number selected, two through five, in a separate random power play drawing announced during the official POWERBALL® draw show.
4. ~~The MUSL shall conduct a separate random "power play" drawing and announce results during each regular POWERBALL® draw held during the promotion. During a POWERBALL® draw, a~~ A single number from a series of ~~fifteen~~ sixteen numbers is selected. The numbers available for selection are "2", "2", "2", "2", "3", "3", "3", "3", "4", "4", "4", "4", "5", "5", "5", "5", and "5". The product group may change one or more of the multiplier numbers for a special promotion.
5. Except as provided by rule, a prize awarded must be paid as a lump sum set prize. Instead of the POWERBALL® set prize amount, a qualifying power play ~~plays~~ play will pay the amounts shown below when matched with the power play number drawn:

~~POWERBALL® Pays Instead~~

	Prize Amount	5X	4X	3X	2X
Match 5+0	\$100,000	\$500,000	\$400,000	\$300,000	\$200,000
Match 4+1	\$5,000	\$25,000	\$20,000	\$15,000	\$10,000
Match 4+0	\$100	\$500	\$400	\$300	\$200
Match 3+1	\$100	\$500	\$400	\$300	\$200
Match 3+0	\$7	\$35	\$28	\$21	\$14
Match 2+1	\$7	\$35	\$28	\$21	\$14
Match 1+1	\$4	\$20	\$16	\$12	\$8
Match 0+1	\$3	\$15	\$12	\$9	\$6

POWERBALL® Pays Instead

<u>Matches per Play</u>	<u>Prize Amount</u>	<u>5X</u>	<u>4X</u>	<u>3X</u>	<u>2X</u>
<u>5 white + 0 red</u>	<u>\$200,000</u>	<u>\$1,000,000</u>	<u>\$800,000</u>	<u>\$600,000</u>	<u>\$400,000</u>
<u>4 white + 1 red</u>	<u>\$10,000</u>	<u>\$50,000</u>	<u>\$40,000</u>	<u>\$30,000</u>	<u>\$20,000</u>
<u>4 white + 0 red</u>	<u>\$100</u>	<u>\$500</u>	<u>\$400</u>	<u>\$300</u>	<u>\$200</u>
<u>3 white + 1 red</u>	<u>\$100</u>	<u>\$500</u>	<u>\$400</u>	<u>\$300</u>	<u>\$200</u>
<u>3 white + 0 red</u>	<u>\$7</u>	<u>\$35</u>	<u>\$28</u>	<u>\$21</u>	<u>\$14</u>

<u>2 white + 1 red</u>	<u>\$7</u>	<u>\$35</u>	<u>\$28</u>	<u>\$21</u>	<u>\$14</u>
<u>1 white + 1 red</u>	<u>\$4</u>	<u>\$20</u>	<u>\$16</u>	<u>\$12</u>	<u>\$8</u>
<u>0 white + 1 red</u>	<u>\$3</u>	<u>\$15</u>	<u>\$12</u>	<u>\$9</u>	<u>\$6</u>

Rarely, a POWERBALL® set prize amount may be less than the amount shown. In that case, a power play prize will be a multiple of the new POWERBALL® set prize amount. For example, if the match 5 POWERBALL® set prize amount of ~~one~~ two hundred thousand dollars becomes twenty-five thousand fifty dollars under the product group's rules of the POWERBALL® game, then, a power play player winning that prize amount when a "5" has been drawn would win one hundred twenty-five thousand two hundred fifty dollars (\$25,050 x 5).

6. The following table reflects the probability of various the power play numbers being drawn ~~during a POWERBALL® drawing~~:

Power Play	Probability of Prize Increase
5X - Prize won times 5	1 in 2.5 <u>4</u>
4X - Prize won times 4	1 in <u>5</u> <u>4</u>
3X - Prize won times 3	1 in <u>5</u> <u>4</u>
2X - Prize won times 2	1 in <u>5</u> <u>4</u>

Power play does not apply to the POWERBALL® grand prize or a match 5 bonus prize.

7. The lottery shall pay a power play prize in one lump sum. ~~The lottery may not pay a power play prize until it receives authorization from the MUSL.~~
8. ~~A prize that, under these rules, may become a parimutuel prize may be rounded down so that a prize can be paid in multiples of whole dollars. Breakage that results from rounding the prize must be carried forward to the prize pool for the next draw.~~

History: Effective February 1, 2004; amended effective November 8, 2005.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-18~~ 53-12.1-13

CHAPTER 10-16-05

10-16-05-01. Game description. To play HOT LOTTO®, a player selects five different white numbers, between one and thirty-nine, and one additional orange number (hot ball) between one and nineteen. The additional number may be the same as one of the first five numbers selected. The price of a ticket play is one dollar. A grand prize is paid, at the election of a winning player or by a default election ~~made according to these rules~~, either on an annuitized parimutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a parimutuel basis. ~~Except as provided by rule, a low-tier~~ A set prize (cash prize of ten thousand dollars or less) is paid on a single-payment cash set-prize basis. Draws are held every Wednesday and Saturday.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-48~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-48~~ 53-12.1-13

10-16-05-02. Expected prize payout pool percentages and odds. ~~A The~~ minimum grand prize must be determined is one million dollars and is paid on a parimutuel basis. ~~Except as provided by rule, a low-tier set prize must be paid as a set prize according to these matches per play and prize amounts with these expected prize payout percentages:~~

Matches Per Play	Prize	Prize Pool Percentage Allocated to Prize
All 5 of first set plus 1 of second set	Grand Prize	52.5763%
All 5 of first set and none of second set	\$10,000	3.2909%
Any 4 of first set plus 1 of second set	\$500	1.5540%
Any 4 of first set and none of second set	\$50	2.7972%
Any 3 of first set plus 1 of second set	\$50	5.1283%
Any 3 of first set and none of second set	\$4	7.3847%
Any 2 of first set plus 1 of second set	\$4	4.3761%
Any 1 of first set plus 1 of second set	\$3	12.7181%
None of first set plus 1 of second set	\$2	10.1745%

1. ~~The prize money allocated to the grand prize pool must be divided equally by the number of tickets that win the grand prize.~~
2. ~~The prize pool percentage allocated to a set prize, cash prizes of ten thousand dollars or less, must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of the set prizes awarded in a draw exceeds the percentage of the prize pool allocated to the set prizes, then the~~

~~amount needed to fund the set prizes awarded must be drawn from these sources, in this order:~~

- ~~a. The amount allocated to the set prizes and carried forward from previous draws, if any.~~
- ~~b. An amount from the product group's set prize reserve account, if available, not to exceed the balance of that account.~~

~~If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded, the highest set prize must become a parimutuel prize. If the amount of the highest set prize, when paid on a parimutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, the next highest set prize must become a parimutuel prize. This procedure must continue down through all set prize levels, if necessary, until all set prize levels become parimutuel prize levels. In that instance, the money available from the funding sources listed by this rule must be divided among the winning plays in proportion to their respective prize percentages.~~

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds*</u>
<u>5 white + 1 orange</u>	<u>Grand prize</u>	<u>52.58%</u>	<u>1:10,939,383</u>
<u>5 white + 0 orange</u>	<u>\$10,000</u>	<u>3.29%</u>	<u>1:607,744</u>
<u>4 white + 1 orange</u>	<u>\$500</u>	<u>1.55%</u>	<u>1:64,349</u>
<u>4 white + 0 orange</u>	<u>\$50</u>	<u>2.80%</u>	<u>1:3,575</u>
<u>3 white + 1 orange</u>	<u>\$50</u>	<u>5.13%</u>	<u>1:1,950</u>
<u>3 white + 0 orange</u>	<u>\$4</u>	<u>7.38%</u>	<u>1:108</u>
<u>2 white + 1 orange</u>	<u>\$4</u>	<u>4.38%</u>	<u>1:183</u>
<u>1 white + 1 orange</u>	<u>\$3</u>	<u>12.72%</u>	<u>1:47</u>
<u>0 white + 1 orange</u>	<u>\$2</u>	<u>10.17%</u>	<u>1:39</u>

Overall odds of winning a prize on a one dollar play are 1:16.

*Reflects the odds of winning and probable distribution of winning plays in and among each prize tier, based on the total number of possible combinations.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC 53-12-18 53-12.1-13

Law Implemented: NDCC 53-12-18 53-12.1-13

10-16-05-03. Probability of winning. Repealed effective April 1, 2006. The following table reflects the probability of winning, rounded to whole numbers, and

probable distribution of winning tickets in and among each prize category, based on the total number of possible combinations:

Matches Per Play	Probability Distribution	Probable/Set Prize Amount
All 5 of first set plus 1 of second set	1:10,939,383	\$5,176,367*
All 5 of first set and none of second set	1:607,744	\$10,000
Any 4 of first set plus 1 of second set	1:64,349	\$500
Any 4 of first set and none of second set	1:3,575	\$50
Any 3 of first set plus 1 of second set	1:1,950	\$50
Any 3 of first set and none of second set	1:108	\$4
Any 2 of first set plus 1 of second set	1:183	\$4
Any 1 of first set plus 1 of second set	1:47	\$3
None of first set plus 1 of second set	1:39	\$2
Overall probability of winning a prize	1:16	

*The grand prize amount is estimated using a twenty-five year deferred payment factor of 1.8. This factor is a variable dependent upon market conditions as determined by the MUSL. The amount does not include the prize reserve account deduction or any other deductions, if any.

History: Effective February 1, 2004.

General Authority: NDCC 53-12-18

Law Implemented: NDCC 53-12-18

10-16-05-04. Prize pool and payment.

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize reserve account is funded to the amount set by the product group. Any amount remaining in the prize pool at the end of the game must be carried forward to a replacement game or expended in a manner as directed by the product group according to the lottery law.
2. Up to one percent of sales must be deducted from the lottery's grand prize pool and placed in trust in a prize reserve account when the annuitized grand prize exceeds two million dollars. An additional two percent of the lottery's sales must be deducted from the lottery's grand prize pool and placed in trust in a prize reserve account when the annuitized grand prize exceeds five million dollars, until the lottery's share of the prize reserve account reaches the amounts designated by the product group. When the lottery's share of the prize reserve account exceeds the designated amounts, the excess must become part of the grand prize pool. The product group, with approval of the MUSL finance and audit committee, may establish a maximum

~~balance for the prize reserve account. The shares of the lottery may be adjusted with a refund to the lottery from the prize reserve account as may be needed to maintain the approved maximum balance and shares of the lottery. Any amount remaining in a prize reserve account at the end of the game must be carried forward to a replacement prize reserve account or expended in a manner as directed by the product group according to the lottery law. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the product group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw.~~

- ~~3. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.~~
- ~~4. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.~~
- ~~5. An annuitized grand prize must be paid annually in twenty-five equal payments with the initial payment being made in cash, to be followed by twenty-four payments funded by the annuity.~~

~~History: Effective February 1, 2004; amended effective April 1, 2006.~~

~~General Authority: NDCC 53-12-18 53-12.1-13~~

~~Law Implemented: NDCC 53-12-18 53-12.1-13~~

~~**10-16-05-05. Prize payment. Repealed effective April 1, 2006. The payment of a grand prize must be made according to section 10-16-04-05 with respect to HOT LOTTO®. However, an annuitized prize must be paid annually in twenty-five equal payments with the initial payment being made in cash, to be followed by twenty-four payments funded by the annuity.**~~

~~History: Effective February 1, 2004.~~

~~General Authority: NDCC 53-12-18~~

~~Law Implemented: NDCC 53-12-18~~

CHAPTER 10-16-06

10-16-06-01. Game description. To play WILD CARD 2®, a player selects five different white numbers, between one and thirty-one, and one out of sixteen card symbols (wild card) selected from the jack, queen, king, or ace of any suit. The player selects two plays for a minimum price of one dollar. A grand prize is paid on a single-payment cash parimutuel basis and a low-tier set prize (cash prize of five thousand dollars or less) is paid on a single-payment cash set prize basis. Draws are held every Wednesday and Saturday.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC 53-12-18 53-12.1-13

Law Implemented: NDCC 53-12-18 53-12.1-13

10-16-06-02. Expected prize payout pool percentages and odds. A The minimum grand prize must be determined is one hundred thousand dollars and is paid on a parimutuel basis. Except as provided by rule, a low-tier set prize must be paid as a set prize according to these matches per play and prize amounts with these expected prize payout percentages:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>
<u>All 5 of first set plus wild card</u>	<u>Grand Prize</u>	<u>36.2485%</u>
<u>All 5 of first set and no wild card</u>	<u>\$5,000</u>	<u>10.4105%</u>
<u>Any 4 of first set plus wild card</u>	<u>\$500</u>	<u>9.0224%</u>
<u>Any 4 of first set and no wild card</u>	<u>\$20</u>	<u>5.4134%</u>
<u>Any 3 of first set plus wild card</u>	<u>\$5</u>	<u>2.2557%</u>
<u>Any 3 of first set and no wild card</u>	<u>\$2</u>	<u>13.5338%</u>
<u>Any 2 of first set plus wild card</u>	<u>\$1</u>	<u>3.6091%</u>
<u>Any 1 of first set plus wild card</u>	<u>\$1</u>	<u>10.3758%</u>
<u>None of first set plus wild card</u>	<u>\$1</u>	<u>9.1308%</u>

1. The prize money allocated to the grand prize pool must be divided equally by the number of tickets that win the grand prize.
2. The prize pool percentage allocated to a set prize, cash prize of five thousand dollars or less, must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of the set prizes awarded in a draw exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded must be drawn from these sources, in this order:
 - a. The amount allocated to the set prizes and carried forward from previous draws, if any.

b. ~~An amount from the product group's set prize reserve account, if available, not to exceed the balance of that account.~~

~~If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded, the highest set prize must become a parimutuel prize. If the amount of the highest set prize, when paid on a parimutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, the next highest set prize must become a parimutuel prize. This procedure must continue down through all set prize levels, if necessary, until all set prize levels become parimutuel prize levels. In that instance, the money available from the funding sources listed by this rule must be divided among the winning plays in proportion to their respective prize percentages. A cash prize level must have a minimum prize payout of one dollar.~~

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds*</u>
<u>5 white + Wild Card</u>	<u>Grand prize</u>	<u>36.25%</u>	<u>1:1,359,288</u>
<u>5 white + no Wild Card</u>	<u>\$5,000</u>	<u>10.41%</u>	<u>1:90,619</u>
<u>4 white + Wild Card</u>	<u>\$500</u>	<u>9.02%</u>	<u>1:10,456</u>
<u>4 white + no Wild Card</u>	<u>\$20</u>	<u>5.41%</u>	<u>1:697</u>
<u>3 white + Wild Card</u>	<u>\$5</u>	<u>2.26%</u>	<u>1:418</u>
<u>3 white + no Wild Card</u>	<u>\$2</u>	<u>13.53%</u>	<u>1:28</u>
<u>2 white + Wild Card</u>	<u>\$1</u>	<u>3.61%</u>	
<u>1 white + Wild Card</u>	<u>\$1</u>	<u>10.38%</u>	<u>1:8</u>
<u>0 white + Wild Card</u>	<u>\$1</u>	<u>9.13%</u>	

Overall odds of winning a prize on a one dollar play are 1:6.

*Reflects the odds of winning and probable distribution of winning plays in and among each prize tier, based on the total number of possible combinations.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC 53-12-18 53-12.1-13

Law Implemented: NDCC 53-12-18 53-12.1-13

10-16-06-03. Probability of winning. Repealed effective April 1, 2006. The following table reflects the probability of winning, rounded to whole numbers, and probable distribution of winning tickets in and among each prize category, based on the total number of possible combinations:

Matches Per Play	Prize	Probability	And Match the Wild Card	
			Prize	Probability
Match 5	\$5,000	1:90,649	Grand Prize	1:1,359,288
Match 4	\$20	1:697	\$500	1:10,456
Match 3	\$2	1:28	\$5	1:418
Match 0, 1, 2	-	-	\$1	1:8
Overall probability of winning a prize				1:6

The grand prize amount excludes the prize reserve account deduction or other deductions, if any.

History: Effective February 1, 2004.

General Authority: NDCC 53-12-18

Law Implemented: NDCC 53-12-18

10-16-06-04. Prize pool and payment.

1. The prize pool for all prize categories must consist of fifty fifty-five percent of each draw period's sales after the prize reserve account is funded to the amount set by the product group. Any amount remaining in the prize pool at the end of the game must be carried forward to a replacement game or expended in a manner as directed by the product group according to the lottery law.
2. Two percent of sales must be deducted from the prize pool and placed in trust in a prize reserve account until the account reaches the amount designated by the product group. When the account exceeds the designated amount, the excess must become part of the prize pool. Any amount remaining in the account must be expended in a manner as directed by the product group according to the lottery law. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the product group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw. A grand prize must be paid in cash in a single payment.
3. The prize pool percentage allocated to set prizes must be carried forward to the next draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

4. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

History: Effective February 1, 2004; amended effective April 1, 2006.

General Authority: NDCC ~~53-12-18~~ 53-12.1-13

Law Implemented: NDCC ~~53-12-18~~ 53-12.1-13

10-16-06-05. Prize payment. Repealed effective April 1, 2006.

1. ~~A grand prize must be paid in cash in a single payment. The lottery may not pay the grand prize until the first working day after the fourteenth calendar day following a draw.~~
2. ~~A prize that according to these rules may become a single-payment parimutuel prize may be rounded down so that the prize can be paid in a multiple of whole dollars. Breakage that results from rounding the prize must be carried forward to the prize pool for the next draw.~~
3. ~~The product group may offer a guaranteed minimum grand prize amount or a minimum increase in the grand prize amount between draws or make other changes in the allocation of prize money when it is in the best interest of the game. A change in the allocation of prize money must be designed to retain approximately the same prize allocation percentages, over one year's time, set out in the rules. A minimum guaranteed prize or increase may be waived if the alternate funding mechanism prescribed by subsection 2 of section 10-16-06-02 is necessary.~~

History: Effective February 1, 2004.

General Authority: NDCC ~~53-12-18~~

Law Implemented: NDCC ~~53-12-18~~

CHAPTER 10-16-07

10-16-07-01. Game description. To play 2BY2®, a player selects two different red numbers, between one and twenty-six, and two additional different white numbers, between one and twenty-six. The numbers for the second (white) set of two numbers may be the same as the numbers for the first (red) set of two numbers. The price of a play is one dollar. The grand prize is paid on a single-payment cash or single-payment cash parimutuel basis and a set prize (cash prize of one hundred dollars or less) is paid on a single-payment cash basis. Draws are held every Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday.

History: Effective November 8, 2005.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-07-02. Expected prize pool percentage and odds. The grand prize is twenty thousand dollars. All prizes awarded must be paid as set cash prizes or free ticket prizes with the following expected prize payout percentages:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds*</u>
<u>2 red + 2 white</u>	<u>Grand prize</u>	<u>38.90%</u>	<u>1:105,625</u>
<u>2 red + 1 white</u>	<u>\$100</u>	<u>9.34%</u>	<u>1:2,201</u>
<u>1 red + 2 white</u>	<u>\$100</u>	<u>9.34%</u>	<u>1:2,201</u>
<u>2 red + 0 white</u>	<u>\$3</u>	<u>1.61%</u>	<u>1:383</u>
<u>0 red + 2 white</u>	<u>\$3</u>	<u>1.61%</u>	<u>1:383</u>
<u>1 red + 1 white</u>	<u>\$3</u>	<u>13.44%</u>	<u>1:46</u>
<u>1 red + 0 white</u>	<u>Free ticket</u>	<u>12.88%</u>	<u>1:8</u>
<u>0 red + 1 white</u>	<u>Free ticket</u>	<u>12.88%</u>	<u>1:8</u>

Overall odds of winning a prize on a one dollar play are 1:3.59.

*Reflects the odds of winning and probable distribution of winning plays in and among each prize tier, based on the total number of possible combinations.

History: Effective November 8, 2005.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-07-03. Prize pool and payment.

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize reserve account is funded.

2. The prize pool percentage allocated to prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the prizes awarded in the current draw.
3. The grand prize amount is twenty thousand dollars unless more than five plays contain the four winning grand prize numbers in a draw. Then, one hundred thousand dollars must be divided equally on a parimutuel basis based on the number of winning plays among the participating lotteries.
4. A "free ticket" prize must be a free quick pick 2BY2® ticket for the next upcoming draw.
5. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

History: Effective November 8, 2005.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

TITLE 20
STATE BOARD OF DENTAL EXAMINERS

APRIL 2006

CHAPTER 20-01-01

20-01-01-01. Organization and functions of board of dental examiners.

1. **History and functions.** In 1895 a five-member board of dental examiners was created to examine dentists as to their qualifications and to license and register qualified dentists.
2. **Board membership.** The board consists of seven members appointed by the governor. Five members must be licensed dentists, one member must be a licensed hygienist, and one member must be a consumer. Members of the board serve five-year terms. No member may serve more than ten years or two 5-year terms of office.
3. **Board members.** Members of the board are elected by the board to fill the individual positions of president, president-elect, and secretary-treasurer. The position of executive director has been created to assist the secretary-treasurer.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive director of the board:

Rita M. ~~Kunz~~ Sommers, RDH, B.A.
North Dakota Board of Dental Examiners
Box 7246
Bismarck, ND 58507-7246
www.nddentalboard.org
701-258-8600

History: Amended effective October 1, 1988; November 1, 1988; July 1, 1993; May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 20-01-02

20-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Anxiolysis" means diminution or elimination of anxiety.
2. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.
3. "Board certified" means the dentist has been certified in a specialty area in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
4. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
5. "Certified dental assistant" means a dental assistant who has satisfactorily completed the educational requirements specified by the commission on dental accreditation of the American dental association for dental assistants or has two years of full-time work experience as a dental assistant, and who has passed and currently holds the dental assisting national board (DANB) certification examination for dental assistants.
6. "Combination inhalation - enteral conscious sedation" (combined conscious sedation) means conscious sedation using inhalation and enteral agents.

When the intent is anxiolysis only, and the appropriate dosage of agents is administered, then the definition of enteral or combined inhalation-ental conscious sedation (combined conscious sedation), or both, does not apply.

Nitrous oxide/oxygen when used in combination or with sedative agents may produce anxiolysis, conscious or deep sedation, or general anesthesia.

7. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.
8. "Conscious sedation" means depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. The drugs or technique, or both, should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.
9. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation. Examination for calculus and instrumentation must be done by the dentist or hygienist.
10. "Deep sedation" is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently or to respond purposefully to physical stimulation or verbal command, and is produced by pharmacological or nonpharmacological method, or combination thereof.
11. "Dental assistant" means a person who under the direct supervision of a dentist renders assistance to a dentist or dental hygienist as described in article 20-03.
12. "Dental hygienist" means any person who is a graduate of a school of dental hygiene with a minimum of two academic years of dental hygiene curriculum approved or provisionally approved by the commission on dental accreditation of the American dental association and who is registered and licensed by the North Dakota board of dental examiners.
13. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.
14. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally

authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.

15. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.
16. "General anesthesia" means an induced state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or nonpharmacological method, or a combination thereof.
17. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis and treatment plan. The dentist is not required to be in the treatment facility. Limitations are contained in North Dakota Century Code section 43-20-03.
18. "Inactive status" means the licensee shall not engage in the practice of dentistry or dental hygiene in the state of North Dakota. The license that is placed on inactive status remains on that status until such time as the license is reinstated.
19. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.
- ~~19:~~ 20. "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.
- ~~20:~~ 21. "Modified general supervision" means that the dentist must personally evaluate the patient, diagnose the conditions to be treated, and plan and authorize treatment. The dentist must personally evaluate the patient at each visit, but need not be present when treatment is initiated or remain until procedures are completed on a patient of record who has been seen in the office in the previous twelve months.
- ~~24:~~ 22. "Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of

events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist.

- ~~22.~~ 23. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.
- ~~23.~~ 24. "Personal supervision" means a level of supervision indicating that the dentist or dental hygienist is personally treating a patient and authorizes the dental hygienist or dental assistant to aid the treatment by concurrently performing a supportive procedure.
- ~~24.~~ 25. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the biennial registration.
- ~~25.~~ 26. "Qualified dental assistant" means a dental assistant who has been employed and trained as a dental assistant ~~for at least six months working at least twenty-four hours per week~~ and has received at least six hundred fifty hours of on-the-job training, has completed a board-approved infection control seminar and passed the x-ray and infection control portions of the DANB examination, and has applied to the board and paid the certificate fee determined by the board.
- ~~26.~~ 27. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program approved or provisionally approved by the commission on dental accreditation of the American dental association, or who has ~~completed two years of full-time work experience~~ received three thousand two hundred hours of on-the-job training as a dental assistant and has completed dental assistant national boards, or who has completed a course in dental assisting which is approved by the North Dakota board of dental examiners, and who is registered by the North Dakota board of dental examiners.
- ~~27.~~ 28. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's biennial registration certificate.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-20-02, 43-20-12, 43-28-06

CHAPTER 20-02-01

20-02-01-04.3. Inactive status - License reinstatement. Any person who holds a dental or dental hygiene license may elect, upon payment of the fee determined by the board, to place that person's license on an inactive status and shall, subject to the rules of the board, be excused from the payment of renewal fees until that person notifies the board in writing of that person's desire to resume active status. Any licensee whose license is in an inactive status shall not practice in the state of North Dakota.

History: Effective April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-05. Permit for anesthesia use.

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia by dentists. The standards specified in this chapter shall apply equally to general anesthesia and parenteral sedation, but do not apply to sedation administered through inhalation. A dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use general anesthesia or conscious sedation on any patient unless such dentist has a permit, currently in effect, issued by the board, initially for a period of twelve months and renewable biennially thereafter, authorizing the use of such general anesthesia or conscious sedation.
2. An applicant may not be issued a permit initially as required in subsection 1 unless:
 - a. The dental examiners approve the applicant's facility after an inspection conducted by an individual or individuals designated by the dental examiners;
 - b. The dental examiners are satisfied that the applicant is in compliance with the American dental ~~association~~ association's most recent policy statement: THE USE OF CONSCIOUS SEDATION, DEEP SEDATION AND GENERAL ANESTHESIA FOR DENTISTS (October 2000); and
 - c. The initial application includes payment of a fee in the amount determined by the dental examiners.
3. The dental examiners may renew such permit biennially, provided:
 - a. Application for renewal is received by the dental examiners before the date of expiration of such permit;

- b. Payment of a renewal fee in the amount to be determined by the dental examiners is received with such application; and
- c. An onsite evaluation of the dentist's facility may be conducted by an individual designated by the dental examiners, and the dental examiners must approve the results of each such evaluation.

History: Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-06. Continuing dental education for dentists, dental hygienists, and dental assistants. Each dentist, dental hygienist, or dental assistant licensed or registered in this state shall provide evidence on forms supplied by the board that the person has attended or participated in continuing dental education in accordance with the following conditions:

1. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in actual teaching sessions. Subject matter directly related to clinical dentistry will be accepted by the board without limit. Limits are established for nonclinical subjects and home study courses.
2. The minimum number of hours required within a two-year cycle for dentists is thirty-two. Of these hours, a dentist may earn no more than six hours in nonclinical subjects relating to the dental profession and no more than ten hours through home study courses.
3. The minimum number of hours required within a two-year cycle for dental hygienists is sixteen. Of these hours, a dental hygienist may earn no more than three hours in nonclinical subjects relating to the dental profession and no more than five hours through home study courses.
4. The minimum number of hours for a registered dental assistant and a qualified dental assistant is eight hours annually. Of these hours, a registered dental assistant or qualified dental assistant may earn no more than three hours in nonclinical subjects relating to the dental profession and no more than two hours through home study courses.
5. Nonclinical subjects relating to the dental profession are those which cover skills relating to dental services in general which are not related to, but are nevertheless supportive of, the provision of clinical dental services. Examples of nonclinical subjects relating to the dental profession are patient management, the legal and ethical responsibilities of the dental profession, and stress management.

6. Examples of nonclinical subjects that will not be creditable to the continuing education requirement are those that deal with estate planning, financial planning, marketing, investments, and personal health.
7. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
8. The infection control continuing education requirement for dentists, dental hygienists, registered dental assistants, and qualified dental assistants practicing in North Dakota is two hours biennially and is a requirement for renewal of the annual certificate of registration. This training may be accomplished in an office setting or at a sponsored course.
9. All dentists, registered dental hygienists, dental assistants, qualified dental assistants, and registered dental assistants must hold a current cardiopulmonary resuscitation certificate of registration or its equivalent, to practice dentistry, dental hygiene, or dental assisting in the state of North Dakota (equivalent means basic life support or advanced care life support).

History: Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002; April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-20-12.1, 43-28-06, 43-28-12.2

20-02-01-07. Removable dental prostheses owner identification.

1. Every complete upper and lower denture or removable dental prosthesis fabricated by a dentist or fabricated pursuant to the dentist's work order must be marked with the name ~~or social security number~~ of the patient for whom the prosthesis is intended. The markings must be done during the fabrication process and must be permanent, and cosmetically acceptable. The exact location of the markings and methods used to apply or implant them shall be determined by the dentist or dental laboratory fabricating the prosthesis. If in the professional judgment of the dentist or dental laboratory this identification is not practical, identification must be provided as follows:
 - a. The initials of the patient may be used if the entire name ~~or social security number~~ is not practical.
 - b. The identification marks may be omitted in their entirety if no form of identification is practical or clinically safe.

2. Failure of any dentist to comply with this section shall be deemed to be a violation of the rules of the board and the dentist may be liable to penalty as permitted under statute.

History: Effective October 1, 1993; amended effective April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-08. Discontinuance of practice - Retirement - Discontinuance of treatment. These rules are adopted for the purpose of avoiding practice abandonment. A licensed dentist shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's legal guardian, the dentist shall furnish the dental records or copies of the records, including dental radiographs or copies of the radiographs. The dentist may charge a nominal fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees.

1. A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon moving from a community, shall notify all active patients in writing and by publication once a week for three consecutive weeks in a newspaper of general circulation in the community that the licensee intends to discontinue the practice of dentistry. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. In the event of a transfer of patient records to another licensee assuming the practice, written notice must be furnished to all patients as hereinbefore specified. "Active patient" is defined as a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to the discontinuation of the practice of dentistry by the licensee. In the event of a nontransfer of records, a licensee shall have the ongoing obligation of not less than two years to afford the licensee's prior patients access to those records not previously provided to the patient.
2. In the event of termination of a dentist-patient relationship by a licensee, notice of the termination must be provided to the patient. A dentist-patient relationship exists if a dentist has provided treatment to a patient on at least one occasion within the preceding year. The dentist who is the owner or custodian of the patient's dental records shall mail notice of the termination of the dentist's relationship to the patient, which shall provide the following:
 - a. The date that the termination becomes effective, and the date on which the dentist and patient relationship may resume, if applicable;
 - b. A location at which the patient may receive emergency dental care for at least thirty days following the termination of the dentist and patient relationship;

- c. A statement of further dental treatment required, if any; and
 - d. A means for the patient to obtain a copy of the patient's dental records.
3. If a licensee dies or becomes unable to practice dentistry due to disability, for the purpose of selling or otherwise disposing of the deceased or disabled licensee's dental practice, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice for a period not to exceed twenty-four months.

History: Effective April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-09. Retention of records. A dentist shall maintain a patient's dental record for a minimum of six years after the date of last examination, prescription, or treatment. Records for minors shall be maintained for a minimum of either one year after the patient reaches the age of eighteen or six years, whichever is longer. Proper safeguards shall be maintained to ensure safety of records from destructive elements. The requirements of this rule apply to electronic records as well as to records kept by any other means.

History: Effective April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

CHAPTER 20-03-01

20-03-01-01. Duties. A dental assistant may perform the services listed in subsections 1 through 6 under direct supervision of a licensed dentist. A registered dental assistant may perform the duties set forth in subsections 7 ~~1~~ through ~~33~~ 24 under direct or indirect supervision only if the dental assistant is of a licensed dentist; a registered dental assistant may perform duties set forth in subsections 25 through 30 under the direct supervision of a licensed dentist and duties set forth in subsections 31 and 32 under the general supervision of a licensed dentist. A qualified dental assistant may perform the duties set out in subsections 1 through 7 under the direct supervision of a licensed dentist.

1. Take and record pulse, blood pressure, and temperature.
2. Take and record preliminary dental and medical history for the interpretation by the dentist.
3. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
4. Receive removable dental prosthesis for cleaning or repair.
5. Take impressions for study casts.
6. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).
7. Take dental radiographs.
8. Apply anticariogenic agents topically.
9. Apply desensitizing solutions to the external surfaces of the teeth.
10. Dry root canal with paper points.
11. Place and remove rubber dams.
12. ~~Place and remove matrix bands and wedges.~~
13. Take occlusal bite registration for study casts.
14. ~~13.~~ Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
15. ~~Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.~~

- ~~16. Adjust permanent crowns outside of the mouth.~~
47. 14. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.
48. 15. Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.
49. 16. Apply pit and fissure sealants if criteria set out in section 20-03-01-04 of these rules are met. Adjust sealants with slow-speed handpiece.
20. 17. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.
24. 18. Polish restorations.
22. 19. Place and remove periodontal dressings, dry socket medications, and packing.
23. 20. Remove sutures.
24. 21. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
25. 22. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
26. 23. Preselect and prefit orthodontic bands.
27. 24. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
28. 25. Place and remove arch wires or appliances that have been activated by a dentist.
- ~~29. Cut arch wires and remove or replace loose bands, loose brackets, or other orthodontic appliances.~~
30. 26. Acid-etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.
34. 27. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.
32. 28. Take face bow transfers.
- ~~33. Take intraoral and extraoral photographs.~~

29. Place and remove matrix bands and wedges.
30. Adjust permanent crowns outside of the mouth.
31. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
32. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-12

20-03-01-03. Annual registration of dental assistants performing expanded duties.

1. Any individual engaged in performing expanded duties in the practice of dental assisting in the state of North Dakota (those duties set out in subsections 7 through ~~33~~ 32 of section 20-03-01-01) must register with the board of dental examiners by submitting an application accompanied by a fee determined by the board. Thereafter, on a yearly basis, before expiration, every dental assistant performing expanded duties shall transmit to the board a registration fee determined by the board and evidence of completion of continuing education requirements, together with other pertinent information as required. At least thirty days before the certificate of registration expiration date, the executive director of the board shall send to every dental assistant performing expanded duties a written notice stating the amount and due date of the fee. A late fee determined by the board shall be assessed if the registration renewal application and fee are not received by the board before expiration.
2. An initial certificate of registration may be issued by the board to a dental assistant when:
 - a. The dental assistant has applied to the board and paid the registration fee determined by the board; and
 - b. The dental assistant possesses one of the following professional qualifications:
 - (1) The dental assistant is currently dental assistant certified by the dental assisting national board;

- (2) The dental assistant has completed a course in dental assisting from a school of dental assisting accredited by the commission on dental accreditation of the American dental association; or
 - (3) The dental assistant has completed a course in dental assisting which is approved by the North Dakota board of dental examiners.
3. Every registered dental assistant performing expanded duties shall provide the board a current business mailing address. A registered dental assistant may not practice in this state for more than thirty days after a change of business address without providing the board with written notice of the new address by first-class mail.
4. Each year registered dental assistants performing expanded duties shall submit to the board with the annual registration evidence of attendance or participation in continuing dental education acceptable to the board. To remain in good standing, a registered dental assistant performing expanded duties must complete at least eight hours of continuing education each year. The board shall suspend the registration of any person who fails to comply with this section.
5. An initial certificate of qualification to take dental radiographs (allows subsections 1 through 7 in section 20-03-01-01) may be issued by the board to a dental assistant when:
 - a. The dental assistant has applied to the board and paid the certificate fee determined by the board.
 - b. The dental assistant has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week and has received at least six hundred fifty hours of on-the-job training.
 - c. The dental assistant has completed a board-approved infection control seminar and passed the x-ray and infection control portions of the dental assisting national board examination.
6. A dental assistant who is not registered or qualified may, at the direction of a licensed dentist, perform only basic dental assisting services listed in subsections 1 through 6 of section 20-03-01-01.

7. Current certification in cardiopulmonary resuscitation and infection control shall be required for registration of all dental assistants.

History: Effective October 1, 1993; amended effective May 1, 1996; July 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-03-01-04. Criteria for dental assistants placing sealants. A dental assistant may place sealants, if the following criteria are met:

1. The assistant is currently certified by the dental assisting national board (DANB) and ~~currently registered with the North Dakota state board of dental examiners of the state of North Dakota; and~~ or
2. The assistant is a graduate within the past two years of an accredited school recognized by the commission on dental accreditation of the American dental association (CODA), or if not a graduate of a CODA accredited school within two years, if the assistant successfully completes a board-approved sealant class or course offered at an accredited school.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

CHAPTER 20-04-01

20-04-01-01. Duties. A dental hygienist may perform the following services under the general, direct, indirect, or modified general supervision of a dentist.

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth, including anticariogenic agents and desensitizing solutions.
4. Take impressions for study casts.
5. Take and record preliminary medical and dental histories for the interpretation by the dentist.
6. Take and record pulse, blood pressure, and temperature.
7. Provide oral hygiene treatment planning.
8. Take dental radiographs.
9. Apply therapeutic agents subgingivally for the treatment of periodontal disease.
10. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).
11. Receive removable dental prosthesis for cleaning and repair.
12. Dry root canal with paper points.
13. Place and remove rubber dams.
14. Place and remove matrix bands or wedges.
15. Take occlusal bite registration for study casts.
16. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
17. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to

dentitions actively under treatment for which a permanent restoration is being fabricated.

18. Adjust permanent crowns outside of the mouth.
19. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.
20. Apply pit and fissure sealants. Adjust sealants with slow speed handpiece.
21. Place and remove periodontal dressings, dry socket medications, and packing.
22. Remove sutures.
23. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
24. Administer local anesthesia under the direct supervision of a dentist if criteria in section 20-04-01-03 are met.
25. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
26. Preselect and prefit orthodontic bands.
27. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
28. Place and remove arch wires or appliances that have been activated by a dentist.
29. Cut and remove arch wires ~~and remove~~ or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
30. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
31. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.
32. Take face bow transfers.

~~33. Take intraoral and extraoral photographs.~~

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004; April 1, 2006.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

CHAPTER 20-05-01

20-05-01-01. Fees. The following fees apply to the services listed:

1. The nonrefundable fee to process an application for a license to practice for an applicant who has completed a clinical board examination within the time period allowed by the state board of dental examiners is two hundred twenty dollars for a dentist and fifty-five dollars for a dental hygienist.
2. The nonrefundable fee to process an application for a license by a review of the applicant's professional credentials without additional clinical examination is four hundred fifty dollars for a dentist and one hundred sixty-five dollars for a dental hygienist.
3. The nonrefundable annual fee to process an application for a temporary license to practice dentistry is one hundred sixty dollars.
4. The fee for annual registration for registered or qualified dental assistants is thirty-five dollars. The certificate of registration biennial renewal fee is two hundred twenty dollars for a dentist and one hundred ten dollars for a dental hygienist.
5. In addition to the fee for renewal, the penalty for late renewal of the biennial certificate of registration is two hundred twenty dollars for dentists, one hundred ten dollars for dental hygienists, and thirty-five dollars for late renewal of the annual certificate of registration for dental assistants.
6. The fee to replace or provide a duplicate copy of a dental or dental hygiene license is forty-five dollars.
7. The fee to reactivate a retired or inactive dental or dental hygiene license is the sum of each year's annual renewal fee since the license was retired plus one hundred dollars. Maximum number of years will be five (maximum fee five hundred fifty dollars for dentists; three hundred twenty-five dollars for hygienists).
8. The nonrefundable annual fee to process an application by a Moorhead, Minnesota, dentist for a restricted dental license to treat emergency dental patients at board-approved settings is fifty dollars.
9. The annual registration fee for renewal of a restricted dental license to treat emergency dental patients at board-approved settings is fifty dollars.
10. The fee for an onsite facility inspection to obtain a permit for anesthesia use will be at a rate similar to compensation paid board members for services rendered to the state of North Dakota.

11. The fee for initial application and biennial renewal of a permit to use general anesthesia or conscious sedation is one hundred dollars.
12. The fee for a volunteer dental license is thirty-five dollars annually.
13. The fee for inactive license status is thirty-five dollars annually.

History: Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-27

TITLE 30
GAME AND FISH DEPARTMENT

APRIL 2006

CHAPTER 30-02-03

30-02-03-03. Application and fees. The application must be made at least sixty days ~~prior to~~ before the desired effective date of the permit, and may be made by the applicant, the applicant's agent, or the applicant's attorney in such a form as the ~~commissioner~~ director may prescribe. If leased land is used in the shooting preserve, the application must be accompanied by a surety bond of two thousand dollars. The permit expires on June thirtieth following the date of issuance. Renewal may be granted annually upon payment of the proper fee and renewal of any surety bond that may have expired or shall expire before the end of the next permit term.

History: Amended effective September 1, 1987; April 1, 2006.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-03-12, 20.1-12-02

30-02-03-05. ~~Game bird identification~~ Number of game birds released. A minimum of one hundred birds of each species to be hunted on the shooting preserve shall be released during the shooting preserve season. ~~A lesser number of Fewer birds may be released upon written permission of the commissioner. All game birds shall be marked prior to release by the shooting preserve operator in a manner predetermined and agreed upon in writing by the commissioner's representative and the shooting preserve operator. Such agreement shall be made at least five days prior to the first release, and the method of marking shall remain consistent with the agreement throughout the entire shooting preserve season~~ director.

History: Amended effective December 1, 1982; April 1, 2006.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-04

30-02-03-06. Rearing game birds. Repealed effective April 1, 2006. The shooting preserve operator must have a game propagation permit in addition to the operator's shooting preserve permit.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-04

30-02-03-11. Hunting wild upland game birds. ~~Certain species of wild upland game birds may be taken on a legal shooting preserve during the regular hunting season for such species of wild upland game birds as proclaimed by the governor. To take wild upland game birds, the resident hunter must have a resident general game license and a resident small game stamp; the nonresident hunter must have a nonresident general game license and a nonresident small game stamp. Wild birds need not be tagged with the preserve operator's tag as described in section 30-02-03-12; but such birds must be taken only within the daily limits prescribed by the governor's proclamation. If a wild upland game bird of the same species as hunted on the shooting preserve is accidentally taken out of the regular hunting season proclaimed by the governor, or is taken by a hunter not in possession of a proper small game stamp, it must be immediately turned over to the shooting preserve operator and a record made of the shooter's name, address, and date of kill. The bird shall be turned over to a representative of the game and fish commissioner as soon as possible. In this case no violation of a game law shall be deemed to have occurred, and no prosecution will be made. If a species of wild upland game bird other than those allowed by the shooting preserve operator's permit is taken by any hunter out of season, or by a hunter not in possession of a proper small game stamp when in season as proclaimed by the governor's proclamation, a violation of the game laws will have occurred. It shall be is the duty of the shooting preserve operator to report to the commissioner director or the commissioner's director's representative any violation of a game law occurring on the shooting preserve. Wild waterfowl may only be taken in a manner conforming to federal regulations.~~

History: Amended effective September 1, 1987; April 1, 2006.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-08

30-02-03-12. Cost of game bird tags. Repealed effective April 1, 2006. ~~The tags provided by the commissioner shall cost five cents each.~~

History: Amended effective December 1, 1982.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-06

30-02-03-13. Report required. The shooting preserve operator shall submit a report of the operator's operations thirty days after each shooting

preserve season. The report shall be made on forms furnished by the game and fish commissioner director.

History: Amended effective December 1, 1982; April 1, 2006.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-07

30-02-03-14. Sale of surplus game birds. Game birds which are surplus to the needs of the shooting preserve may be sold by the operator under the operator's game propagator's permit. Carcasses of birds to be ~~thus~~ disposed of must be tagged with a tag as required in North Dakota Century Code section 20.1-09-05. The tag shall be separate and distinct from the tag used for birds taken on the shooting preserve. Tags for bird carcasses may be obtained from the commissioner director at a cost of ~~four~~ ten cents each. Live birds may be sold only to another licensed shooting preserve operator or to a person holding a permit to propagate game birds. Accurate records of such sales must be kept.

History: Amended effective April 1, 2006.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-08

30-02-03-17. Recordkeeping requirements. The shooting preserve operator shall maintain records of bird releases to include date, number, and species; clients; the number of birds harvested both wild and released per client; number of wild birds kept per client; the total number of wild birds harvested; and the combined total of all birds harvested. At no time may the total number of birds harvested, excluding birds taken pursuant to a lawful season, exceed the number of birds that have been released in the current season. The total of wild birds kept by clients may not at any time exceed twenty-five percent of the total wild birds harvested. Other than those wild birds allowed to be retained by a client, the shooting preserve operator shall deliver to the department all wild birds harvested. The operator may comply with this requirement by freezing the birds at the operator's own premises and notifying the district game warden for the operator's area that the birds are available for pickup. Those birds stored shall be labeled by date killed and name of client harvesting the bird. All birds, including wild birds, harvested and kept by clients must be tagged as required by this chapter.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-06

CHAPTER 30-02-05

30-02-05-01. Procedures and conditions. ~~Prior to the~~ Before printing or distribution of distributing any raffle tickets, the rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall submit to the director of the ~~North Dakota game and fish department~~ an overall plan of raffle procedures and program conditions for the director's approval. A detailed copy of guidelines for volunteers who are assisting in the sales of raffle tickets must also be submitted. Upon the director's approval, the rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center must provide a copy of these guidelines to all volunteers prior to before the volunteers being are issued tickets for sale to the public. The raffle must be organized and conducted in accordance with ~~chapter 10-04.1-07 and~~ North Dakota Century Code chapter 53-06.1 and North Dakota Administrative Code article 99-01.3.

History: Effective June 1, 1992; amended effective April 1, 2006.

General Authority: NDCC 20.1-08-04.6

Law Implemented: NDCC 20.1-08-04.6

30-02-05-02. Accounting statement. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center will provide the ~~game and fish~~ director with a detailed accounting statement within thirty days after the completion of the raffle drawing. This statement will include information regarding raffle expenses, gross and net raffle income, number of tickets sold and unsold, as well as documented proof that no more than ten percent of the gross raffle proceeds were used to promote the raffle.

History: Effective June 1, 1992; amended effective April 1, 2006.

General Authority: NDCC 20.1-08-04.6

Law Implemented: NDCC 20.1-08-04.6

30-02-05-03. Financial report. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center will provide the director with an annual financial report for all projects funded with raffle proceeds and the balance of unspent funds.

History: Effective June 1, 1992; amended effective April 1, 2006.

General Authority: NDCC 20.1-08-04.6

Law Implemented: NDCC 20.1-08-04.6

CHAPTER 30-02-06

30-02-06-01. Procedures and conditions. ~~Prior to the~~ Before printing or distribution of distributing any raffle tickets, the ~~North Dakota game warden association~~ American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation shall submit to the director of the ~~North Dakota game and fish department~~ an overall plan of raffle procedures and program conditions for the director's approval. A detailed copy of guidelines for volunteers who are assisting in the sales of raffle tickets must also be submitted. Upon the director's approval, the ~~North Dakota game warden association~~ American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation must provide a copy of these guidelines to all volunteers ~~prior to~~ before the volunteers ~~being~~ are issued tickets for sale to the public. The raffle must be organized and conducted in accordance with ~~chapter 99-01-09 and~~ North Dakota Century Code chapter 53-06.1 and North Dakota Administrative Code article 99-01.3.

History: Effective May 1, 1994; amended effective April 1, 2006.

General Authority: NDCC 20.1-08-04.2

Law Implemented: NDCC 20.1-08-04.2

30-02-06-02. Accounting statement. The ~~North Dakota game warden association~~ American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation shall provide the director of the ~~game and fish department~~ with a detailed accounting statement within thirty days after the completion of the raffle drawing. This statement must include information regarding raffle expenses, gross and net raffle income, number of tickets sold and unsold, as well as documented proof that no more than ten percent of the gross raffle proceeds were used to promote the raffle.

History: Effective May 1, 1994; amended effective April 1, 2006.

General Authority: NDCC 20.1-08-04.2

Law Implemented: NDCC 20.1-08-04.2

30-02-06-03. Financial report. The ~~North Dakota game warden association~~ American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation shall provide the director of the ~~game and fish department~~ with an annual financial report to show documentation of how all raffle proceeds were used and the balance of unspent funds.

History: Effective May 1, 1994; amended effective April 1, 2006.

General Authority: NDCC 20.1-08-04.2

Law Implemented: NDCC 20.1-08-04.2

CHAPTER 30-02-07
MULE DEER LICENSE RAFFLE

Section

<u>30-02-07-01</u>	<u>Procedures and Conditions</u>
<u>30-02-07-02</u>	<u>Accounting Statement</u>
<u>30-02-07-03</u>	<u>Financial Report</u>

30-02-07-01. Procedures and conditions. Before printing or distributing any raffle tickets, the mule deer foundation shall submit to the director an overall plan of raffle procedures and program conditions for the director's approval. A detailed copy of guidelines for volunteers who are assisting in the sales of raffle tickets must also be submitted. Upon the director's approval, the mule deer foundation must provide a copy of these guidelines to all volunteers before the volunteers are issued tickets for sale to the public. The raffle must be organized and conducted in accordance with North Dakota Century Code chapter 53-06.1 and North Dakota Administrative Code article 99-01.3.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-08-04.8

Law Implemented: NDCC 20.1-08-04.8

30-02-07-02. Accounting statement. The mule deer foundation will provide the director with a detailed accounting statement within thirty days after the completion of the raffle drawing. This statement will include information regarding raffle expenses, gross and net raffle income, number of tickets sold and unsold, as well as documented proof that no more than ten percent of the gross raffle proceeds were used to promote the raffle.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-08-04.8

Law Implemented: NDCC 20.1-08-04.8

30-02-07-03. Financial report. The mule deer foundation will provide the director with an annual financial report for all projects funded with raffle proceeds and the balance of unspent funds.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-08-04.8

Law Implemented: NDCC 20.1-08-04.8

CHAPTER 30-03-01

30-03-01-01. License required. No person, as defined by North Dakota Century Code section 20.1-01-02, shall sell, at retail or at wholesale, any live bait without first obtaining the appropriate annual license authorizing the person to do so. All licenses must be publicly displayed on the business premises. Business names must be displayed on any vehicle used to transport bait for sale. Licenses will be issued on a calendar year basis.

History: Amended effective January 1, 1991; May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-03. License limitations. The holder of a retail bait vendor license may sell live bait at retail only, at one specified selling location per license. ~~The holder of a A wholesale bait vendor license may only sell live bait at wholesale only to a licensed bait vendor.~~ Both a retail license and a wholesale license are necessary to sell live bait at both retail and wholesale.

History: Amended effective May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-04. Assistants covered by license. Retail or wholesale bait vendor licenses are issued to one individual person only. A licensed retail bait vendor may have the assistance of other persons to sell live bait at the selling location designated on the vendor's license. A licensed wholesale bait vendor may ~~have~~ employ the assistance of up to three other persons to capture or sell and transport live bait, provided the persons are named on the wholesale license and the original or copy of the wholesale license and other appropriate permits are carried on the person or in the transport vehicle. The licenseholder is responsible for the actions of employees, including all agents or assistants acting under their license. No one who has had a department-issued license revoked or suspended within three years may act as an agent or assistant.

History: Amended effective May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-05. Quantity requiring license. ~~It shall be considered as possessing for commercial purposes when any person has in possession at one time~~ Possession of over twelve dozen minnows or live baitfish legal for use or resale shall require a retail or wholesale license.

History: Amended effective May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-06. Equipment. Persons commercializing in or transporting live bait shall use equipment capable of maintaining such live bait in a healthy and lively condition at all times. Each species of live baitfish must be kept separate from other species of live baitfish in holding and transport equipment. The premises and equipment of all persons commercializing in live bait shall be open to the inspection of the ~~game and fish~~ director or any of the director's duly appointed agents at any time. ~~Upon inspection, if equipment is found to be inadequate for these purposes, the vendor will be notified in writing. Upon written notification, the vendor shall make the necessary corrections within thirty days.~~

History: Amended effective January 1, 1991; May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-07. Species permitted. Persons raising ~~minnows or other~~ baitfish for sale shall raise ~~for sale only the following~~ those species: ~~the common white sucker, catostomus commersoni, and members of the family cyprinidae native to North Dakota waters with the exception of the carp, cyprinus carpio; the goldfish, carassius auratus; or any species listed as threatened or endangered~~ listed in the current fishing proclamation as legal live baitfish.

History: Amended effective May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-08. Interstate transport. ~~It shall be is~~ illegal to transport minnows import or other ship live baitfish and amphibians bait into or out of the state except with a permit issued by the ~~game and fish~~ director and only with equipment in the manner approved by the director. Shipments of legal baitfish and, amphibians, and other aquatic organisms into or out of North Dakota are subject to periodic inspection by a duly appointed agent of the ~~game and fish~~ director. The director must be notified a minimum of twenty-four hours ~~prior to~~ before any import of minnows or other live baitfish ~~or, amphibians, or other aquatic organisms.~~ Failure of the vendor to secure the proper permission permits is a ~~noncriminal~~ offense class B misdemeanor and may result in the revocation of the vendor's license and assessment of a penalty of two hundred fifty dollars.

History: Amended effective June 1, 1985; January 1, 1991; May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-09. Records. Each licensee shall keep accurate and up-to-date records, on forms furnished by the department, of location, species, and numbers of ~~minnow or~~ live bait seined or trapped by the dealer ~~from public or private waters.~~ Authorization to trap rivers and streams is required from the director ~~prior to~~ before trapping. A bait dealer purchasing live bait or minnows frozen baitfish for resale must record, on forms furnished by the department, the species and number as well as the name and address of the person from whom the dealer purchased them.

~~This record~~ Records must be open to inspection by ~~an employee~~ of the department at any reasonable hour. A copy of this record shall be submitted to the director no later than thirty days following expiration of the license. ~~The record~~ Records must be ~~kept intact~~ retained by the licenseholder for a period of two years after the expiration of any license issued under this section.

History: Amended effective January 1, 1991; May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

~~30-03-01-10. Seines and traps. A person possessing only a retail license may take minnows with a seine not exceeding twenty-five feet [7.6 meters] in length and six feet [1.8 meters] in depth or with traps not larger than thirty inches [76 centimeters] in length, twelve inches [30.5 centimeters] in diameter, with a throat opening not to exceed one and one-quarter inches [3.2 centimeters] in diameter. The mesh size of both seine and traps shall not exceed three-eighths inch [9.5 millimeters] square measure.~~

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

~~30-03-01-11. Live bait farm. The term "live bait farm" means any private hatchery, other facility, or pond used to raise live bait for wholesale. A live bait farm may be operated only by the holder of a wholesale bait license. Any wholesaler stocking live bait must first procure a stocking permit from the director.~~

History: Amended effective April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

~~30-03-01-12. Equipment for live bait farms. A person possessing only a retail license may take live baitfish with a seine not exceeding twenty-five feet [7.6 meters] in length and six feet [1.8 meters] in depth or with traps not larger than thirty inches [76 centimeters] in length, twelve inches [30.5 centimeters] in diameter, with a throat opening not to exceed one and three-quarter inches [4.445 centimeters] in diameter. The mesh size of both seine and traps shall not exceed three-eighths inch [9.5 millimeters] square measure.~~

A wholesaler operating a live bait farm may use additional equipment for harvesting the live bait, under the following conditions:

1. Upon application by a wholesaler, a permit may be granted by the ~~game and fish~~ director for the use of additional trapping or seining nets to harvest live bait from described private areas. The permit shall be issued only after it has been determined that the use of the ~~private~~ areas does not in any way interfere or conflict with the ~~fishery resource~~ management programs of the ~~North Dakota game and fish~~ department or the United States fish and wildlife service.

2. Netting equipment allowed by special permit shall be used only in areas listed on the permit, and the equipment must have attached at all times the tags issued with and corresponding to the permit.
3. Fishtraps used by a wholesaler under permit shall be restricted to those less than five feet [1.5 meters] in ~~diameter~~ any dimension. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure, and the throat opening shall be less than ~~six~~ three inches [~~152~~ 76.2 millimeters] in diameter or width.
4. Seines used by a wholesaler under permit shall be restricted to those less than two hundred fifty feet [76 meters] in length and fourteen feet [4.25 meters] in depth. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure.
5. Incidental take of nonpermitted species must be returned to the water immediately.

History: Amended effective May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-04

~~30-03-01-13. Minnow stocking~~ **Stocking.** ~~It shall be illegal to stock minnows or other live bait into any waters of North Dakota where such minnows or bait could escape into waters under sport fish management by the North Dakota game and fish department or the United States fish and wildlife service. Stocking of any live fish, live fish eggs, live amphibians, or other live aquatic organism into any waters of the state shall be illegal except with the appropriate license or permit issued by the director. Violation of this section is a class B misdemeanor.~~

History: Amended effective May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

~~30-03-01-14. Violations are noncriminal and penalties.~~ **Any person retail or wholesale bait vendor who violates any section of this chapter for which a penalty is not specifically provided is guilty of a noncriminal offense and shall pay a fifty one hundred dollar fee. The violation may result in license revocation of the wholesale or retail license.**

History: Effective April 1, 1986; amended effective January 1, 1991; May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-02-05(24)

Law Implemented: NDCC 20.1-02-05(24)

CHAPTER 30-03-03

30-03-03-03. Dimensions. ~~The Any structure shall not cover an area of more than one hundred forty-four square feet [13.38 square meters]. It used as a fishhouse shall be constructed of a floatable material. It shall be constructed in such a manner as that will allow it to float and to be readily removable from the ice at any time. It shall have painted upon the exterior in readily distinguishable characters at least six inches [152 millimeters] high, the license number and name and address of the owner. Campers may not be used as fishhouses. Holes not to exceed twelve inches [30.5 centimeters] in diameter or square may be made in the ice for the purpose of hook and line angling.~~

History: Amended effective September 1, 1993; April 1, 2006.

General Authority: NDCC 20.1-06-07

Law Implemented: NDCC 20.1-06-07

30-03-03-04. Location. Fishhouses may be placed no closer than fifty feet [15 meters] to each other in any direction and fish holes outside of any fishhouse may not be placed closer than ten feet [3 meters] from any fishhouse without consent of the fishhouse occupant.

History: Amended effective April 1, 2006.

General Authority: NDCC 20.1-06-07

Law Implemented: NDCC 20.1-06-07

CHAPTER 30-04-02

30-04-02-01. Public access and use. All state wildlife game or fish management areas are open for public hunting, fishing, and trapping, or other compatible public use, except as otherwise provided under in this chapter, governor's proclamation, ~~other valid rules and regulations or laws~~, or as posted at public road entry points. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee. As used in this chapter, "wildlife management area" or "WMA" has the same meaning as "game or fish management area" in North Dakota Century Code chapter 20.1-11.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-03. Motor vehicles. Mallard Island on Wolf Creek WMA and Matthews Islands Island on Detrobriand WMA are closed to the use of all motorized vehicles and aircraft. On all other state wildlife management areas, the use of all motorized vehicles is restricted to those constructed roads, well-worn established trails, and parking areas normally used by passenger cars. Established roads and trails do not include temporary trails across cultivated land used for agricultural purposes. Motor vehicles may be used on the ice of lakes for access ~~for fishing~~ unless otherwise prohibited by posting or by proclamation. Persons operating any motor vehicle on the ice of any lake or other water area on a state wildlife management area do so at their own risk. Motor vehicles may not be used off established roads and trails for retrieval of big game or for waterfowl hunting on wildlife management areas, except where allowed by governor's proclamation or as posted at public road entry points. All motorized vehicles ~~which that~~ produce a noise level of eighty-five decibels, or greater, measured on scale A, at a distance of fifty feet [15.2 meters] are prohibited. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty one hundred dollar fee.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-04. Watercraft. ~~Watercraft shall not be left~~ No person may leave watercraft unattended for more than twenty-four hours, except in mooring areas designated by the department on a wildlife management area unless the watercraft is being used on a daily basis. The department may have horsepower or other watercraft restrictions on some wildlife management area lakes, as posted at entry points. Any person who violates this section is guilty of a noncriminal offense and shall pay a ~~twenty-five~~ fifty dollar fee.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-05. Firearms. Use of firearms on wildlife management areas is ~~prohibited for such periods of time as are allowed, except in a reckless and indiscriminate manner, and as otherwise posted at public road and trail entry points, except that firearms are permitted on target ranges designated by the department. Promiscuous shooting is prohibited on all state wildlife management areas.~~ A person discharging a firearm on a department-designated target range shall not be considered to be engaging in indiscriminate shooting. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty one hundred dollar fee.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-06. Littering and abandonment of property. The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited except in garbage containers where provided. Abandonment of vehicles or other personal property is prohibited. Holding tanks of campers may not be dumped within a state wildlife management area. ~~Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.~~

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-07. Removal and destruction of property. ~~Frees~~ Archaeological artifacts or cultural resources as defined in North Dakota Century Code section 55-03-00.1, trees, shrubs, vines, plants, gravel, fill, sod, water, crops, firewood, posts, poles, or other property may not be mowed, clipped, cut, or removed from a wildlife management area without a permit issued by the department director or the director's designee, except that firewood may be removed under certain stated conditions from department designated firewood cutting plots. Commercial cutting of firewood is prohibited on designated firewood cutting plots. Gathering of downed wood for campfires is permitted. Removal of property from a wildlife management area by permit shall be only in a manner, limit, ~~and/or~~ and conditions specified by the permit. Berries and fruit may be picked, for noncommercial use unless ~~posting prohibits same prohibited by posted signs at public road entry points.~~ Property may not be destroyed or defaced. ~~Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.~~

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-08. Private property and structures. No person shall construct or maintain any building, cabin, dock, fence, beehive, billboard, sign, or other structure on any wildlife management area except by permit issued by the department director or the director's designee. Fishhouses may be used during the ice fishing season in accordance with the governor's proclamation. Duck,

goose, crane, and other ~~type types of~~ decoys may not be left unattended in the field on any state wildlife management area. ~~Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.~~

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-09. Cropping, haying, and commercial enterprises. No person shall may conduct any cropping, haying, or other commercial enterprise on any wildlife management area, except by lease or permit issued by the department. ~~Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee~~ director or the director's designee.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-10. ~~Animal trespass~~ Animals prohibited - Exceptions. The director has determined that animals, other than free-ranging wildlife that may be found on wildlife management areas, are detrimental to the protection and propagation of wildlife and other natural resources. Except as otherwise provided in this section and section 30-04-02-14.2, no individual may possess or cause the entry of any animal on any wildlife management area.

1. **Livestock.** Livestock shall not be permitted to graze or roam on any state wildlife management area except as provided for by a grazing permit or lease issued by the department director or the director's designee. As used in this section, "livestock" means domestic animals and nontraditional livestock as defined by North Dakota Century Code section 36-01-00.1. ~~Any person who violates this subsection is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.~~
2. **Pets.** Pets may not be permitted to run unattended on wildlife management areas. Any ~~person~~ individual who violates this subsection is guilty of a noncriminal offense and shall pay a fifty dollar fee.
3. **Horseback riding.** A person may engage in casual horseback riding or trail riding on wildlife management areas. Groups of twenty-five or more individual riders or twenty-five or more horses or other equine animals must first obtain a permit from the director or the director's designee. No person may engage in, conduct, or organize any competitive or noncompetitive activity involving the use of horses or other equines to conduct racing, barrel racing, roping, jumping, or other activities that cause unnecessary disturbance to the wildlife and wildlife habitat. Any

person who violates this subsection is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-11. Camping. Camping for longer than ten consecutive days on any state wildlife management area is prohibited. Trailers, campers, motor homes, or tents may not be left ~~unattended for more than twenty-four hours~~ on any state wildlife management area unless used for daily lodging. Camping is prohibited on those state wildlife management areas where posted at public road entry points. Mowing of vegetation for campsites is prohibited on wildlife management areas. Any person who violates this section is guilty of a noncriminal offense and shall pay a ~~twenty-five~~ one hundred dollar fee.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-12. ~~Organized group~~ Group activities. ~~Organized group~~ Group activities attended by more than twenty-five persons are prohibited without a permit issued by the ~~department~~ director or the director's designee. Any person who violates this section is guilty of a noncriminal offense and shall pay a ~~fifty~~ one hundred dollar fee.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-14. Noise. Excessive noise, which unreasonably disturbs ~~persons~~ other individuals, is prohibited on state wildlife management areas. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-14.1. Tree stands. No person may construct or use a permanent tree stand or permanent steps to a tree stand on any state wildlife management area ~~except as provided by a permit issued by the department.~~ Permanent tree stands and steps are defined as those which are (1) fastened to the tree with nails, spikes, bolts, or other metal fasteners driven or screwed into the tree or are (2) themselves fixtures driven or screwed into the tree. Portable tree stands and portable steps, screw-in steps, and natural tree stands may be used without a permit. Portable tree stands and portable steps to the tree stand are defined as those which that are held to the tree with ropes, straps, cables, chains, or bars ~~which do not penetrate the bark of the tree.~~ The ladder type. Screw-in steps are those that are screwed into

the tree by hand without the aid of any tools. Ladder-type stands which lean against the tree are portable stands. The A notched board placed in a tree crotch is a portable stand. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting rights of others in the vicinity of the tree stand. Tree stands, both permanent and portable, and steps may not be put up prior to before August twentieth of the year, and they shall be taken down by January tenth of the following year. Stands and steps not removed by the tenth of January are considered abandoned property and are subject to removal and confiscation by the department director or the director's designee. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 1986; amended effective April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-14.2. Dogs. Field No person may conduct, permit, or carry out field trials for dogs are prohibited on any wildlife management area without first obtaining a permit issued by the department from the director or the director's designee. Training of bird and gun dogs is prohibited April first through August fifteenth on all state wildlife management areas. Training of dogs on any state wildlife management areas by a professional trainer is prohibited at all times. Any person other than a professional trainer who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 1986; amended effective April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-15. Department work. These rules This chapter shall not apply to activities by department personnel the director, the director's agents and employees, and other persons designated by the department which are director when necessary for law enforcement or for development, management, or maintenance of any state wildlife management area.

History: Amended effective April 1, 1986; April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-16. Glass beverage containers or kegs prohibited. No person may use or possess glass beverage containers or kegs on any state wildlife management area. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty one hundred dollar fee.

History: Effective November 1, 1995; amended effective April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-17. Baiting. Except as otherwise provided herein, no person may place or use bait for attracting, luring, feeding, or habituating wildlife to the bait location for any purpose on a wildlife management area. Bait includes grains, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting, or management activities of the department. A person may use bait to lure and take furbearers when engaged in lawful trapping activities. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-18. Fireworks, model rocket engines, or combustible or explosive materials prohibited.

1. No person may possess, discharge, or set off within any wildlife management area any form of fireworks, model rocket engine, or combustible or explosive material unless authorized by the director or the director's designee.
2. The term "fireworks" means any combustible or explosive composition, or any substance or combination of substances or article prepared to produce a visible or audible effect by combustion, explosion, deflagration, or detonation. The term includes any blank cartridge, toy pistol, toy cannon, toy cane, or toy gun in which an explosive other than a toy paper cap is used; balloon that requires fire underneath to propel the balloon; firecracker, torpedo, skyrocket, Roman candle, daygo bomb, sparkler, or other item of like construction; item containing any explosive or flammable compound; or any tablet or other device containing any explosive substance. This section does not apply to any toy paper cap containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap.
3. "Model rocket engine" means a commercially manufactured, nonreusable rocket propulsion device constructed of a nonmetallic casing and solid propellant wherein all of the ingredients are self-contained so as not to require mixing or handling by the user. The propellant charge may not exceed two and two-tenths ounces [62.37 grams] per engine.
4. "Combustible or explosive material" does not include rifle, shotgun, or handgun ammunition; petroleum-base or synthetic fuels and lubricants when contained within a motor or recreational vehicle engine or drive train; or matches, butane, kerosene, propane, or similar fuels and devices used in the ordinary course of camping.

Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

30-04-02-19. Penalty. Any person violating a provision of this chapter for which a penalty is not specifically provided is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

CHAPTER 30-04-03

30-04-03-02. Fee and residence. Repealed effective April 1, 2006. Upon application as provided by the game and fish commissioner and payment of the appropriate fee, any person having maintained a residence in North Dakota and having resided in North Dakota for the six-month period immediately preceding the date of the application may be licensed to act as a guide or outfitter and charge fees for such service in North Dakota.

History: Amended effective December 1, 1982; repealed effective January 1, 1997; reinstated November 1, 1997.

General Authority: NDCC 20.1-01-02, 20.1-01-05

Law Implemented: NDCC 20.1-03-12

30-04-03-03. License nontransferable. Repealed effective April 1, 2006. Any license issued under this chapter shall be issued only in the name of one individual and shall not be transferable.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-03-04. License to be carried. Repealed effective April 1, 2006. The license must be carried upon the person of the licensee at all times when performing as a guide or outfitter.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-03-05. License inspection. Repealed effective April 1, 2006. The license shall be subject to inspection at any time by the director or any of the director's authorized personnel or by any law enforcement officer.

History: Amended effective January 1, 1997.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-03-06. Licensee provides rules. Repealed effective April 1, 2006. Any person licensed as a guide or outfitter shall be required to be well versed in the hunting laws of North Dakota and in federal laws pertaining to hunting in North Dakota, and it shall be the person's responsibility to ascertain that the person's clients are familiar with such laws and to provide them with current hunting proclamations and rules.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-03-07. Advance charge list. Any Each licensed guide or outfitter, prior to consummation of contract for service, shall furnish to each client a printed form listing in detail all acts of service and any other accommodations which the

~~guide or outfitter will provide for the fee received, and such form shall specify the charge per day for such service or accommodations.~~

History: Repealed effective January 1, 1997; reinstated November 1, 1997; amended effective April 1, 2006.

General Authority: NDCC ~~20.1-02-05~~ 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC ~~20.1-02-05~~ 20.1-02-15

30-04-03-08. Receipt required. Any Each licensed ~~guide or~~ outfitter, upon payment received for service, shall immediately ~~thereon~~ issue to the payee a receipt showing the amount received and shall indicate ~~thereon~~ "for guide or outfitting service" and the period for which the service was rendered, and the receipt shall bear the ~~guide's or outfitter's~~ signature; and complete permanent address ~~and the number of the guide's or outfitter's license.~~

History: Amended effective April 1, 1986; repealed effective January 1, 1997; reinstated November 1, 1997; amended effective April 1, 2006.

General Authority: NDCC ~~20.1-02-05~~ 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC ~~20.1-02-05~~ 20.1-02-02, 20.1-02-15, 20.1-03-36.2, 20.1-03-38

30-04-03-09. Records. Repealed effective April 1, 2006. ~~The licensee shall keep a current record of all transactions as a guide or outfitter, and the records shall be kept by the guide or outfitter for at least three years and shall be subject to inspection at any time on demand of the director, the director's authorized personnel, or any law enforcement officer.~~

History: Amended effective January 1, 1997.

General Authority: NDCC ~~20.1-02-05~~

Law Implemented: NDCC ~~20.1-02-05~~

30-04-03-10. License revocation. Repealed effective April 1, 2006. ~~The license of any licensed guide or outfitter shall be subject to revocation or refusal to renew, after due hearing pursuant to North Dakota Century Code chapter 28-32, in addition to any other penalties prescribed by law or rule for a violation, when the licensed guide or outfitter:~~

- ~~1. Is convicted of violating any game or fish law of the state of North Dakota;~~
- ~~2. Is convicted of violating any federal law pertaining to hunting, fishing, or trapping;~~
- ~~3. Fails to comply with this chapter; or~~

4. ~~While carrying out the business of guiding or outfitting, engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry.~~

History: Amended effective January 1, 1997.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-03-12. General penalty. Any person violating a provision of this chapter for which a penalty is not specifically provided is guilty of a noncriminal offense and shall pay a twenty-five one hundred dollar fee.

History: Effective September 1, 1989; amended effective April 1, 2006.

General Authority: NDCC 20.1-02-05 20.1-02-04

Law Implemented: NDCC 20.1-02-05 20.1-02-04

30-04-03-13. Hunting guide and hunting outfitter examination. If an applicant is required to take the written examination to be eligible for a hunting guide or hunting outfitter license in North Dakota, the applicant must preregister for the examination with the department. Dates, times, and locations of the examinations shall be announced to the public by news release and be available as a notice on the department's web site.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 20.1-03-38

30-04-03-14. Initial application for guide and outfitter license. An initial applicant for a guide or outfitter license shall submit a completed application on a form provided by the department and the fees required under North Dakota Century Code section 20.1-03-36.1. Information requested on the form must be completed and signed by the applicant. Providing false or misleading information requested on the application may be grounds to deny the issuance of a license for the calendar year of the application. The applicant shall also provide:

1. If the applicant is applying for a hunting guide or hunting outfitter license, proof the applicant is currently certified in adult cardiopulmonary resuscitation or its equivalent and in standard or first aid or its equivalent. A photocopy of certification will be sufficient proof of training.
2. If the applicant is applying for a hunting outfitter license, proof that the applicant has held a hunting guide license in North Dakota or any other state for two years. Such proof shall be in the form of information generated by the state of licensure.
3. A signed certification on a form provided by the department that the applicant has not been convicted of a state or federal criminal game or fish violation in the last three years from the date of the application or

whose license to hunt or fish is under suspension or revocation in North Dakota or any other state.

4. A statement in an application for a hunting guide license listing the dates the applicant has legally hunted in North Dakota for three years before the date of the application. The department may require the applicant to explain how three years of practical field experience gained by hunting have directly contributed to the applicant's experience and competency as a guide and how the three years have influenced the applicant's capability to perform essential duties associated with guiding and outfitting as defined in North Dakota Century Code section 20.1-01-02. The director reserves the right to request additional information to supplement the applicant's submission.
5. Proof of insurance shall be in the form of a certificate of liability insurance from the insuring entity certifying that the applicant and the applicant's business operation are covered by general liability insurance against loss or expense due to accident or injury from outfitting services, at a minimum of one hundred thousand dollars per individual and three hundred thousand dollars per accident.
6. An applicant for a hunting outfitter license must include a listing of all land to be used by the outfitter to provide services. Acreage reports shall include the name of the landowner and lessor, the number of acres of land, and the location of the land by county.
7. An applicant for a hunting guide license must include a written notice from an employing or contracting licensed outfitter that the applicant will be retained to provide guiding services during the term of the applicant's license period. A licensed hunting guide may provide services to more than one hunting outfitter, but shall provide written notice from each outfitter to the department.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 20.1-03-37

30-04-03-15. Applicant to renew hunting guide's or outfitter's application. A hunting guide or hunting outfitter who was licensed in North Dakota during the previous year and who seeks license renewal shall not be required to retake the hunting guide and hunting outfitter examination. All applicants for renewal, however, shall complete the application form provided by the department and provide:

1. If the applicant seeks a hunting guide or hunting outfitter license renewal, proof the applicant is currently certified in adult cardiopulmonary resuscitation or its equivalent and in standard or first aid or its equivalent.

2. A signed certification on a form provided by the department that the applicant has not been convicted of a state or federal criminal game or fish violation in the last year from the date of the application for renewal or whose license to hunt or fish is under suspension or revocation in North Dakota or any other state.
3. Insurance - new certificate. A licensed hunting guide or outfitter shall notify the department within ten days of any change to the information reported under this section.
4. The department may require additional documentation to substantiate the information provided in this section before approving an applicant for initial licensure or license renewal.
5. If the applicant is renewing a hunting outfitter license, the applicant must provide a report of any day lease or freelance acres used in the previous year giving the number of acres used and the county in which those acres were located if the applicant held a day lease or freelance permit and a list of land to be used by the applicant to provide services during the application year with the same information required in an initial application.
6. If the applicant is renewing a hunting guide license, the applicant must provide written certification from an employing or contracting licensed outfitter in the same manner required in an initial application.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 20.1-03-37

30-04-03-16. Failure to renew license. The department may not issue a license to a person who held a guide or outfitter license and who has failed to renew the license under this chapter for two or more consecutive years unless the person again meets the qualifications for initial issuance of the license.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 20.1-03-38

30-04-03-17. Hunting guide and hunting outfitter examination. Any written examination required will be administered from at least one regional department office on the assigned time and date. Once an applicant has passed the written examination, the applicant must become licensed by the end of the following calendar year. To pass the written test, a score of eighty percent must be achieved. A person who fails to obtain the license by the end of the following calendar year or fails to maintain a hunting guide or hunting outfitter license for two calendar years or more after obtaining a license, in addition to the annual eligibility requirements, must retake the written examination before being issued another hunting guide or hunting outfitter license. A hunting guide or hunting outfitter,

whose license has been revoked, in addition to the annual eligibility requirements, must successfully retake the written examination before being issued a new license under this section.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 20.1-03-38

30-04-03-18. Guide requirements. It is the responsibility of a licensed guide and outfitter acting as a guide to:

1. Ensure that the appropriate tags are attached to any game or fish taken by a client and all game or fish transported is prepared in compliance with applicable state and federal laws.
2. Ensure that the proper licenses and game tags are in the client's possession before the hunt begins.
3. Take every reasonable measure to assure the safety of the client.
4. Promptly report any violation of state or federal law or regulation governing wildlife, game, and fish that occur during the guiding activity to any law enforcement officer or the department.
5. Use every lawful means at the licensee's disposal to retrieve a wounded animal while it is in danger of escaping.
6. Advise clients and employees involved in a hunt of all applicable state and federal statutes and regulations related to the hunting or fishing activity to be conducted.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 20.1-03-27, 20.1-03-38, 20.1-04-06, 20.1-05-02, 20.1-05-03

30-04-03-19. Hunt or fish records. The licensed outfitter shall keep a current record of all transactions as a guide or outfitter, including a hunt or fish record for each hunting or fishing client. The records shall be kept by the outfitter for at least three years and shall be subject to inspection at any time on demand of the director, the director's authorized personnel, or any law enforcement officer. The department shall provide the hunt or fish record form to all licensed outfitters. The records shall be kept and maintained in North Dakota. If the outfitter wishes to use the outfitter's own form, it must contain the following information:

1. The client's name, address, and hunting or fishing license number.
2. The contracting outfitter's name and original signature attesting to the accuracy of the information supplied on the hunt or fish record form.

3. The names of all hunting guides, hunting outfitters, or fishing outfitters who will accompany the client in the field.
4. For each guided client, at the conclusion of the hunting or fishing trip, the licensed outfitter shall complete the applicable remaining portions of the hunt or fish record, including:
 - a. The dates the client was in the field.
 - b. The species of game hunted or fish pursued.
 - c. For each animal, bird, or fish species taken, the:
 - (1) Date taken.
 - (2) Number of each species taken.
5. The hunting guide, hunting outfitter, or fishing outfitter may refer to a client by group name if the individual members of the group are identified elsewhere in the guide's records and their individual information is recorded as to name, address, and license number.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 20.1-03-38

30-04-03-20. Falsification of required records. Any person completing or maintaining required records containing knowingly false information shall be deemed to have made a false statement in a governmental matter and is liable under subdivision c of subsection 2 of North Dakota Century Code section 12.1-11-02.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 12.1-11-02(2)(c)

30-04-03-21. Automatic guide license suspension. If a hunting outfitter has the hunting outfitter's license suspended or revoked, a hunting guide's license under that operation shall be given notice and may not provide guiding services until employment is obtained from another licensed hunting outfitter and written notice of the new employment or contract is provided to the department. Any hunting guide providing services after being notified that the outfitter is no longer licensed shall be deemed providing guiding services with a suspended license.

History: Effective April 1, 2006.

General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)

Law Implemented: NDCC 20.1-03-39

CHAPTER 30-04-07

30-04-07-01. Schedule of monetary values. The following base values for wildlife are established:

Grebes	\$ 25.00	
Pelicans and Loons	100.00	
Herons, Egrets, and Bitterns	50.00	
Ducks - except:	25.00	
 Redhead and Canvasback	50.00	
Geese	75.00	
Whistling Swan	100.00	
Hawks and Vultures	100.00	
Kites	200.00	
Golden Eagle	500.00	
Bald Eagle	1,000.00	
Peregrine	1,000.00	
Osprey, Gyr Falcon, Prairie Falcon	100.00	
 Kestrel, Merlin	50.00	
Grouse, Pheasant, and		
 Partridge - except:	20.00	
 Greater Prairie Chicken	500.00	
Wild Turkey	100.00	
Whooping Crane	1,000.00	
Sandhill Crane	100.00	
All Owls	100.00	
Curlew, Godwit, Avocet	50.00	
All Other Birds - except:	20.00	
 Blackbirds, Magpies, English		
 Sparrow, Crows, Starlings -		
 No value		
Snapping Turtles	10.00	
Weasels	10.00 + Fur market value	
Marten	100.00 + Fur market value	
Wolverine	250.00 + Fur market value	
Badger	50.00 + Fur market value	
Coyote, Red Fox, Grey Fox,		
 and Fisher	40.00 + Fur market value	
Rabbits, Hares, Tree Squirrels,		
 and Muskrat	5.00 + Fur market value	
Porcupine	10.00 + Fur market value	
Elk and Pronghorn	500.00	
Whitetail and Mule Deer	300.00	
Moose and Bighorn Sheep	800.00	
Raccoon, Mink, Beaver	20.00 + Fur market value	
Lynx and Bobcat	100.00 + Fur market value	

~~Prime fur market value will not be added to the base value if the fur is usable or marketable by the state.~~

1. Big Game

a. Deer

\$500

b. Pronghorn

\$1,000

2. Upland Game Birds

a.	<u>Prairie Chicken</u>	<u>\$500</u>
b.	<u>Sage Grouse</u>	<u>\$500</u>
c.	<u>Turkey</u>	<u>\$250</u>
d.	<u>Upland Game Bird (e.g., Pheasant, Grouse, Gray Partridge)</u>	<u>\$50</u>
3.	<u>Migratory Game Birds</u>	
a.	<u>Swan</u>	<u>\$200</u>
b.	<u>Sandhill Crane</u>	<u>\$100</u>
c.	<u>Goose</u>	<u>\$50</u>
d.	<u>Redhead, Canvasback, Pintail</u>	<u>\$75</u>
e.	<u>All Other Ducks and Mergansers</u>	<u>\$50</u>
f.	<u>Other Migratory Game Birds</u>	<u>\$50</u>
4.	<u>Nongame Birds</u>	
a.	<u>Species of Conservation Priority</u>	
(1)	<u>Level I Species</u>	<u>\$400</u>
	<u>(Horned Grebe, American White Pelican, American Bittern, Swainson's Hawk, Ferruginous Hawk, Yellow Rail, Willet, Upland Sandpiper, Long-Billed Curlew, Marbled Godwit, Wilson's Phalarope, Franklin's Gull, Black Tern, Black-Billed Cuckoo, Sprague's Pipit, Grasshopper Sparrow, Baird's Sparrow, Nelson's Sharp-Tailed Sparrow, Lark Bunting, Chestnut-Collared Longspur)</u>	
(2)	<u>Level II Species</u>	<u>\$300</u>
	<u>(Northern Harrier, Prairie Falcon, American Avocet, Short-Eared Owl, Red-Headed Woodpecker, Loggerhead Shrike, Sedge Wren, Dickcissel, Le Conte's Sparrow, Bobolink)</u>	
(3)	<u>Level III Species</u>	<u>\$200</u>
	<u>(Brewer's Sparrow, McCown's, Longspur)</u>	
b.	<u>Waterbirds (e.g., Egret, Heron, Loon, Grebe)</u>	
	<u>Whooping Crane</u>	<u>\$1,000</u>
	<u>Egret and Heron</u>	<u>\$50</u>
	<u>Loon</u>	<u>\$200</u>
	<u>Grebe</u>	<u>\$50</u>
c.	<u>Shorebirds (e.g., Avocet, Sandpiper, Killdeer)</u>	<u>\$50</u>
d.	<u>Raptors</u>	
	<u>Golden Eagle</u>	<u>\$500</u>
	<u>Bald Eagle</u>	<u>\$1,000</u>

	<u>Peregrine</u>	<u>\$1,000</u>
e.	<u>All Other Raptors (e.g., Vulture, Hawk, Owl, Falcon)</u>	<u>\$100</u>
f.	<u>All Other Birds</u>	<u>\$25</u>
	<u>Except: English Sparrows, Blackbirds, Crows, Starlings</u>	<u>No Value</u>
5.	<u>Protected Furbearers and Small Game Mammals</u>	
a.	<u>Bear</u>	<u>\$1,000</u>
b.	<u>Bobcat and Lynx</u>	<u>\$500</u>
c.	<u>Mountain Lion</u>	<u>\$1,000</u>
d.	<u>Wolf</u>	<u>\$1,000</u>
e.	<u>Red Fox and Coyote</u>	<u>\$75</u>
f.	<u>Otter, Fisher, Pine Marten, Wolverine</u>	<u>\$200</u>
g.	<u>All Other Protected Furbearers</u>	<u>\$50</u>
h.	<u>Small Game Mammals (e.g., Rabbit, Gray Squirrel, Fox Squirrel)</u>	<u>\$25</u>
6.	<u>Snapping Turtle</u>	<u>\$50</u>
7.	<u>Fish - and Freshwater Mussels</u>	

The values of fish are those listed in the American Fisheries Society Special Publication No. ~~43~~ 30, "Investigation and Monetary Values of Fish and Freshwater Fish and Fish-Kill Counting Guidelines Mussell Kills", ~~1982~~ 2003. A copy is available for viewing at the Bismarck office of the North Dakota game and fish department. This publication may be purchased by writing to the following address:

American Fisheries Society
 5410 Grosvenor Lane, Suite 100
 Bethesda, MD 20814

History: Effective May 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 20.1-01-03

Law Implemented: NDCC 20.1-01-03

30-04-07-02. Adjustments to base values. The base values listed in section 30-04-07-01, excluding the values of fish, are subject to the following adjustment:

4. Value = Base value x Species age and size percent x Species condition percent.

a. Species age and size*:

- ~~Considerably above average size adult~~ - 150% of base value
Big game adult males, 2 1/2 years or older
- ~~Average size adult~~ - 100% of base value
Females and males less than 2 1/2 years
- Young of the year** - 50% of base value

*Average size, age, and condition will be determined by investigator.

- ** (1) Species that breed once a year - an obvious young of the year animal killed before September first.
- (2) Species that breed more than once a year - an obvious young of the year animal at time of death.
- (3) Bird species before first flight.

~~*Species condition:~~

Average condition	-----	= 100% of base value
<hr/>		
Considerably below average condition	-----	= 50% of base value

b. Examples:

- (1) ~~A large adult whitetail buck in good condition was killed by an illegal act.~~

~~Value = \$300.00 x 150% x 100% = \$450.00~~

- (2) ~~An adult red fox in good condition was killed by an illegal act.~~

~~Value = \$40.00 x 100% x 100% = \$40.00 (fur sold by the state)~~

- 2. ~~Because of rarity or special consideration the value of all bald eagles, bighorn sheep, common loons, peregrine falcons, and whooping cranes will be the base value regardless of age, size, or condition.~~

History: Effective May 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 20.1-01-03

Law Implemented: NDCC 20.1-01-03

CHAPTER 30-05-01

30-05-01-02. Boat safety equipment. The following equipment is required as indicated, and must be usable and in serviceable condition.

1. Personal flotation devices - Penalty.

a. All motorboats less than sixteen feet [4.8 meters] in length and all nonpowered boats must have one United States coast guard approved type I, II, or III device aboard for each person. All motorboats sixteen feet [4.8 meters] or greater in length must have one United States coast guard approved type I, II, or III device aboard for each person, and, in addition, one United States coast guard approved throwable type IV device. Any person who violates this subdivision is guilty of a noncriminal offense and shall pay a twenty-five dollar fee for each United States coast guard approved type I, II, or III device not aboard as required for each person with a maximum fee of two hundred fifty dollars for a shortage of ten or more.

b. All persons manipulating any water skis, surfboard, or similar device must wear a United States coast guard approved type I, II, or III device. The only exception is that of a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under North Dakota Century Code section 20.1-13-11.

2. Fire extinguishers. Motorboats of less than twenty-six feet [7.8 meters] in length need no fire extinguishing equipment, unless the boat has a double bottom not sealed to the hull or not completely filled with flotation material; or unless it has closed stowage compartments in which combustible or flammable materials are stored; or unless it has closed compartments under thwarts and seats wherein portable fuel tanks may be stored; or unless it has closed living spaces; or unless it has permanently installed fuel tanks. If in any of these categories, it must have either a fixed fire extinguishing system in the machinery spaces, or at least one United States coast guard approved B-I type portable extinguisher. Motorboats twenty-six [7.8 meters] to forty feet [12 meters] in length must have either two United States coast guard approved B-I type portable extinguishers or one United States coast guard approved B-II type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces and one United States coast guard approved B-I type portable extinguisher. Motorboats forty feet [12 meters] or over in length must have either three United States coast guard B-I type portable extinguishers, or one United States coast guard approved B-II type portable extinguisher and one B-I type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces along with one United States coast guard approved B-II type or two B-I type portable extinguishers, or a fixed

fire extinguishing system in the machinery spaces along with one United States coast guard approved B-II type or two B-I type portable extinguishers.

3. **Backfire flame arrester.** One United States coast guard approved device is required on each carburetor of all gasoline powered engines, except outboard motors.
4. **Bells and whistles.** Boats sixteen feet [4.8 meters] to less than twenty-six feet [7.8 meters] in length require one hand, mouth, or power operated whistle audible at least one-half mile [.8 kilometer]. Boats twenty-six feet [7.8 meters] to less than forty feet [12 meters] in length require a hand or power operated whistle audible at least one mile [1.6 kilometers], and a bell which produces a clear, bell-like tone when struck. Boats over forty feet [12 meters] in length require a power operated whistle audible at least one mile [1.6 kilometers] and a bell which produces a clear, bell-like tone when struck.
5. **Ventilation.** All motorboats with enclosed engine or fuel compartments, and using gasoline as a fuel, must have at least two ventilator ducts, fitted with cowls, or the equivalent, leading to each such compartment, to properly and efficiently ventilate the compartment.
6. **Lighting.** When operating between sunset and sunrise, all motorboats under twenty-six feet [6.8 meters] in length shall exhibit a twenty-point [225 degree] combination red and green bowlight visible for one mile [1.6 kilometers], ten points [112.5 degrees] to the left of the centerline of the boat being red, the ten points [112.5 degrees] to the right of the centerline being green, and a thirty-two-point [360 degree] white stern light, visible for two miles [3.2 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

When operating between sunset and sunrise, all motorboats twenty-six feet [6.8 meters] in length or over shall exhibit a twenty-point [225 degree] white bowlight visible for two miles [3.2 kilometers], a ten-point [112.5 degree] red side light, visible for one mile [1.6 kilometers], on the left side of the vessel, a ten-point [112.5 degree] green side light, visible for one mile [1.6 kilometers] on the right side (the side lights shall be visible through an arc beginning parallel to the centerline of the vessel and extending ten points [112.5 degrees] toward the stern), and a thirty-two-point [360 degree] white stern light visible for two miles [3.6 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

All nonpowered boats operating between sunset and sunrise shall have readily accessible a white light source which shall be temporarily exhibited in sufficient time to prevent a collision.

All vessels at anchor between sunset and sunrise must display a white light visible to a boat approaching from any direction.

7. Any Except as provided in subdivision a of subsection 1, any person who violates this section is guilty of a noncriminal offense and shall pay a twenty-five dollar fee.

History: Amended effective December 1, 1982; April 1, 1986; May 1, 1995; April 1, 2006.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-05

30-05-01-05. Accident reports. If a collision, accident, or other casualty involving a vessel results in death or injury to a person or damage to property in excess of ~~five hundred~~ two thousand dollars, or a person disappears from such vessel under circumstances that indicate death or injury, the operator thereof shall complete and submit a complete boating accident report, CG-3865 form, or revision thereof, in duplicate to the game and fish department, within forty-eight hours in cases involving death or injury, within five days in all other cases. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee. The CG-3865 form may be obtained from a game warden or by contacting the department at the location provided in subsection 3 of section 30-01-01-01.

History: Amended effective December 1, 1982; April 1, 1986; January 1, 1992; April 1, 2006.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-08

30-05-01-06. Practice permits for regattas, races, marine parades, tournaments, or exhibitions. Organizations desiring to practice in preparation for regattas, races, marine parades, tournaments, or exhibitions, as prescribed in North Dakota Century Code section 20.1-13-11, may do so only with written authorization from the ~~commissioner~~ director of the game and fish department or the ~~commissioner's~~ director's designated representatives. An organization representative must file a completed permit application on a form provided by the department. The ~~commissioner~~ director or the ~~commissioner's~~ director's designated representative may issue the permit and designate the date, time, and location for the practice. The names of the individuals to practice must be listed on the permit.

History: Effective December 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 20.1-13-12(3)

Law Implemented: NDCC 20.1-13-10(5), 20.1-13-11

TITLE 50

STATE BOARD OF MEDICAL EXAMINERS

APRIL 2006

CHAPTER 50-02-13

50-02-13-07. Period of licensure. A postgraduate training license issued under section ~~50-02-13-03~~ is valid for a period of twelve months, unless it is revoked, suspended, or otherwise limited by the board. However, the may, in the discretion of the board, be issued for a period of one or more years. However, in no event shall the license be issued for a period of time exceeding the date on which the applicant is reasonably expected to complete the postgraduate training program for which the license is being issued.

In the event a license is issued for a period of time exceeding one year, the board may nevertheless require the licensee to periodically supply information to the board regarding the licensee's credentials and physical and mental health. Failure to provide that information to the board will constitute a violation of subsection 28 of North Dakota Century Code section 43-17-31.

The board may issue a temporary postgraduate training license to allow the applicant to participate in postgraduate training between the time the application is submitted to the board's office and the time of the next meeting of the board. A temporary postgraduate training license may not be issued if the application file contains significant derogatory information.

History: Effective May 1, 2000; amended effective April 1, 2006.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-18

50-02-13-09. Fees. The annual fee for a postgraduate training license is twenty-five dollars for each year for which the license is valid. That fee shall be paid in full at the time the license is issued.

History: Effective May 1, 2000; amended effective April 1, 2006.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-18

TITLE 61.5

NORTH DAKOTA BOARD OF PHYSICAL THERAPY

APRIL 2006

CHAPTER 61.5-01-01

61.5-01-01-01. Organization of the ~~state examining committee for physical therapists~~ North Dakota board of physical therapy.

1. **History.** The state examining committee for physical therapists was created in 1959 to assist the state board of medical examiners in the examination and registration of physical therapists in North Dakota. While it operated as a separate committee, it was by law an advisory committee to the state board of medical examiners. The forty-sixth legislative assembly in 1979 revamped most of North Dakota Century Code chapter 43-26 on physical therapists, and in the process made the committee a separate entity with complete jurisdiction over the examination and registration of physical therapists. In 1989, the legislative assembly allowed physical therapists to practice without a physician referral and in 2005 the fifty-ninth legislative assembly completely revised the physical therapy practice act and renamed the committee the North Dakota board of physical therapy.
2. **~~Committee membership.~~** ~~The committee consists of six persons appointed by the governor. Three committee members must be registered physical therapists, two members must be licensed physicians, and one member must be a nonhealth care professional. Committee terms are to be staggered and are for five years. Possible nominations to the committee will be solicited by the committee's secretary, who may be the executive officer, from all registered physical therapists in the state at the time notices for registration renewal are sent out.~~
3. **Meetings.** ~~The committee shall hold at least one annual meeting, and such other meetings as may be called by the president. Any committee~~ board ~~member who fails to attend two consecutive annual meetings shall have been deemed to have resigned unless the member has reasons satisfactory to the committee~~ board ~~for being unable to attend.~~

4. 3. **Compensation.** Committee Board members shall receive expenses from committee board funds for each day or a portion thereof spent in committee board work as provided for other state officers in North Dakota Century Code chapter 44-08.
5. 4. **Executive officer.** The committee board shall designate an executive officer, ~~who does not have to be a committee member, but who must be a North Dakota licensed physical therapist,~~ and shall compensate any person it hires to administer the committee's board's duties.

The committee's executive officer is:

Ms. Lynn G. Kubousek
P.O. Box 69
Grafton, ND 58237
(701) 352-0125

History: Effective December 1, 1980; amended effective August 1, 1983; April 1, 1988; April 1, 1992; February 1, 1993; July 1, 2004; April 1, 2006.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1, ~~43-26-05~~ 43-26.1-02, 43-26.1-03

CHAPTER 61.5-01-02

61.5-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "A school of physical therapy or a program of physical therapist assistant training" is a nationally accredited program approved by the ~~committee~~ board.
2. "~~Committee Board~~" means the North Dakota ~~state examining committee for physical therapists~~ board of physical therapy.
3. "Consultation by means of telecommunications" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or health care provider via telecommunications or computer technology from a distant location. It includes the transfer of data or exchange of educational or related information by means of audio, video, or data communications. The physical therapist may use telehealth technology as a vehicle for providing only services that are legally or professionally authorized. The patient's written or verbal consent will be obtained and documented prior to such consultation. All records used or resulting from a consultation by means of telecommunications are part of a patient's record and are subject to applicable confidentiality requirements.
4. "Direct supervision" means the physical therapist is physically present on the premises and immediately available for direction and supervision. The physical therapist will have direct contact with the patient during each visit. Telecommunications does not meet the requirement for direct supervision.
5. "~~National examination~~" or "~~examination~~" "Examination" means the a national examination adopted by the federation of state boards of physical therapy approved by the board for the licensure of a physical therapist or a physical therapist assistant.
6. "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.
7. "Onsite supervision" means the supervising physical therapist is ~~continuously~~ onsite and present in the department or facility where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session in which supportive personnel are involved in components of care.
7. 8. "Physical therapist" means a person ~~who applies~~ licensed under North Dakota Century Code chapter 43-26.1 to practice physical therapy.

The term "physiotherapist" is synonymous with "physical therapist" for purposes of these rules.

- 8- 9. "Physical therapist assistant" means a health-care worker person licensed under North Dakota Century Code chapter 43-26.1 who assists the a physical therapist in the provision selected components of physical therapy intervention. The physical therapist assistant must be a graduate of a physical therapist assistant associate-degree program accredited by an agency recognized by the secretary of the United States department of education or the council on postsecondary accreditation. ~~The physical therapist assistant must be licensed to practice in North Dakota approved by the board.~~
- 9- 10. "Physical therapy" means the art and science of a health specialty concerned with the prevention of disability and the physical rehabilitation for congenital or acquired disabilities resulting from, or secondary to, injury or disease. The practice of physical therapy means the practice of the health specialty, and encompasses physical therapy evaluation, treatment planning, instruction, and consultative services, including:
- a. ~~Performing and interpreting tests and measurements as an aid to physical therapy treatment.~~
 - b. ~~Planning initial and subsequent treatment programs on the basis of test findings.~~
 - c. ~~Administering treatment by therapeutic exercise; neurodevelopmental procedures, therapeutic massage, mechanical devices, and therapeutic agents which employ the physical, chemical, and other properties of air, water, heat, cold, electricity, sound, and radiant energy for the purpose of correcting or alleviating any physical or mental condition, or preventing the development of any physical or mental disability. care and services by or under the direction of a physical therapist.~~
- 40- 11. "Physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.
- 44- 12. "Practice of physical therapy" means:
- a. Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement and mobility, and disabilities or other health-related and movement-related conditions in order to determine a diagnosis for physical therapy, prognosis, and plan of therapeutic intervention, and to assess the ongoing effects of intervention.

- b. Alleviating impairments, functional limitations in movement and mobility, and disabilities by designing, implementing, and modifying therapeutic interventions that may include therapeutic exercise; neuromuscular education; functional training related to positioning, movement, and mobility in self-care and in-home, community, or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment related to positioning, movement, and mobility; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physiotherapy; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.
 - c. Engaging as a physical therapist in reducing the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.
 - d. Engaging as a physical therapist in administration, consultation, education, and research.
13. "Restricted license" for a physical therapist or physical therapist assistant means a license on which the board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee may provide services.
14. "Student" is an individual who is currently engaged in the fulfillment of a physical therapy or physical therapist assistant educational program approved by the committee board.
12. 15. "Supportive personnel" are persons other than registered licensed physical therapists who function in a physical therapy setting and assist with physical therapy care.
16. "Testing" means standard methods and techniques used to gather data about the patient.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-01, 43-26-04, 43-26-06, 43-26-07, 43-26-10, 43-26-11(12)~~ 43-26.1-01, 43-26.1-04

CHAPTER 61.5-02-01

61.5-02-01-03. Repeating examinations. An applicant who fails an examination may repeat the examination, but must pay another examination fee each time the examination is repeated. ~~An applicant may write the examination a maximum of four times within one calendar year. After the fourth time, an applicant must wait one calendar year and show evidence of remediation approved by the committee before again taking the examination.~~ After the second failed attempt, an applicant must reapply for licensure, complete a remediation plan approved by the board, and wait at least sixty days before repeating the examination. An applicant may not write the examination more than three times within a calendar year.

History: Effective December 1, 1980; amended effective April 1, 1992; July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-05, 43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-05, 43-26-06~~ 43-26.1-03, 43-26.1-05

CHAPTER 61.5-02-02

61.5-02-02-01. General registration licensure requirements for graduates of approved curricula. The following requirements apply to all applicants for registration licensure who are graduates of physical therapy or physical therapist assistant curricula approved by the committee board:

1. United States-educated applicants:
 - a. A completed application form.
 2. b. Payment of the appropriate fees as set by the committee board.
 3. c. An official transcript giving evidence of graduation from a curricula approved by the committee board.
 4. d. Passing scores on the national examination.
 5. e. Completion of the juris prudence examination.
 6. f. Completion of other educational requirements as set by the board.
 - g. At the committee's board's discretion, an interview with the committee board or its designees thereof.
2. Foreign-educated applicants:
 - a. A completed application form.
 - b. Payment of the appropriate fees set by the board.
 - c. Verification of documents by an agency recognized by the board.
 - d. Satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in a physical therapy education program approved by the board. Substantially equivalent means an applicant for licensure educated outside of the United States shall have:
 - (1) Graduated from a physical therapist education program that prepares the applicant to engage without restrictions in the practice of physical therapy.
 - (2) Proof that the applicant's school of physical therapy education is recognized by its own ministry of education.
 - (3) Pass the board-approved English proficiency examination if the applicant's native language is not English.

- e. Passing scores on the national examination.
- f. Completion of juris prudence examination.
- g. At the board's discretion, an interview with the board or its designees.
- h. Completion of a six-month preceptorship under the direct supervision of a physical therapist licensed and actively practicing in North Dakota.

History: Effective December 1, 1980; amended effective July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-05, 43-26-06~~ 43-26.1-03, 43-26.1-04

61.5-02-02-02. Types of registration licensure.

1. Official registration: For licensure by examination, all general licensure requirements must be met.
 - a. ~~By examination, general registration requirements must be met.~~
 - b. ~~By endorsement, United States jurisdiction:~~
 - (1) ~~General registration requirements must be met.~~
 - (2) ~~Verification of registration in good standing from the jurisdictions in which the applicant has been registered.~~
 - (3) ~~Copy of scores on the national examination transmitted by a score transfer service approved by the committee.~~
 - (4) ~~If the applicant has not practiced physical therapy for three or more years, the applicant must take or retake the national examination.~~
2. Foreign-educated applicant: For licensure by endorsement from another United States jurisdiction:
 - a. By examination: All general licensure requirements must be met.
 - (1) ~~A completed application form.~~
 - (2) ~~Payment of the appropriate fees as set by the committee.~~
 - (3) ~~Verification of documents by an agency recognized by the committee.~~

- (a) ~~Satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in a physical therapy education program approved by the committee.~~
 - (b) ~~Graduated from a physical therapist education program that prepares the applicant to engage without restrictions in the practice of physical therapy.~~
 - (c) ~~Proof that the applicant's school of physical therapy education is recognized by its own ministry of education.~~
 - (d) ~~Pass the board-approved English proficiency examination if the applicant's native language is not English.~~
- (4) ~~Passing scores on the national examination.~~
 - (5) ~~Completion of juris prudence examination.~~
 - (6) ~~At the committee's discretion, an interview with the committee or designees thereof.~~
 - (7) ~~Completion of a six-month preceptorship under the direct supervision of a physical therapist, registered and actively practicing in North Dakota.~~
- b. ~~By endorsement from another United States jurisdiction:~~
- (1) ~~A completed application form.~~
 - (2) ~~Payment of the appropriate fees as set by the committee.~~
 - (3) ~~Verification of documents by an agency recognized by the committee licensure in good standing from all jurisdictions in which the applicant has been licensed.~~
- (a) ~~Satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in a physical therapy education program approved by the committee.~~
 - (b) ~~Graduated from a physical therapist education program that prepares the applicant to engage without restrictions in the practice of physical therapy.~~

- ~~(c) Proof that the applicant's school of physical therapy education is recognized by its own ministry of education.~~
- ~~(d) Pass the board-approved English proficiency examination if the applicant's native language is not English.~~
- ~~(4) Copy of passing scores on the national examination received by a score transfer service approved by the committee.~~
- ~~(5) Completion of juris prudence examination.~~
- ~~(6) Verification of registration in good standing from the jurisdictions in which the applicant has been registered.~~
- ~~(7) At the committee's discretion, an interview with the committee or designees thereof.~~
- ~~(8) Completion of a six-month preceptorship under the direct supervision of a physical therapist, registered and actively practicing in North Dakota.~~
- ~~(9) If the applicant has not practiced physical therapy for three or more years, the applicant must take or retake the national examination.~~
- c. Copy of scores on the examination transmitted by a score transfer service approved by the board.
- d. At the board's discretion, an interview with the board or its designees.
- e. If the applicant has not practiced physical therapy for three or more years, the applicant shall demonstrate to the board's satisfaction competence to practice physical therapy by one or more of the following as determined by the board:
 - (1) Practice for a specified time under a restricted license.
 - (2) Complete prescribed remedial courses.
 - (3) Complete continuing competence requirements for the period of the expired license.
 - (4) Pass an examination.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-01, 43-26-04, 43-26-06, 43-26-07, 43-26-10, 43-26-11(12)~~ 43-26.1-04, 43-26.1-05

61.5-02-02-05. Renewal of registration licensure.

1. ~~Registrations shall be~~ Licenses not renewed annually by January thirty-first will expire.
2. If a registrant licensee fails to receive the renewal notice, it is the licensee's responsibility ~~of the registrant~~ to contact the ~~committee board~~ before the January thirty-first deadline.
3. ~~Any registrant who fails to make application for renewal of registration by January thirty-first will, at the committee's discretion, pay~~ A licensee who fails to renew the license on or before the expiration date shall not practice as a physical therapist or physical therapist assistant in this state, and may be subject to a late renewal fee as prescribed in section 61.5-02-03-01.
4. ~~A registration expires if not renewed by January thirty-first.~~ Complete other educational requirements as prescribed by the board.
5. ~~If a registration has expired for more than a year, the registrant is not eligible for renewal, but must apply for registration. However, registrants whose registrations have lapsed and who have been unregistered for more than one year but less than three years from the last renewal may not be required to take the national examination, provided the continuing education requirements have been met.~~ Each licensee is responsible for reporting to the board a name change and changes in business and home addresses within thirty days of the change.
6. All licensed physical therapists may be required to file with the ~~committee board~~ a notarized statement indicating they have read these administrative rules.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-01, 43-26-09, 43-26-11(12)~~ 43-26.1-08, 43-26.1-09

61.5-02-02-05.1. Reinstatement of licenses.

1. The board may reinstate an expired license upon payment of a renewal fee and reinstatement fee.
2. If a license has expired for more than one year, the licensee is not eligible for renewal, but must submit application for licensure.
3. Licensees whose licenses have lapsed and who have been unlicensed for more than one year but less than three years from the last renewal must reapply for licensure and provide evidence that the cumulative continuing education requirements have been met for the unlicensed period.
4. Licensees whose licenses have lapsed for more than three consecutive years must reapply for licensure and shall demonstrate to the board's satisfaction competence to practice physical therapy, by one or more of the following as determined by the board:
 - a. Practice for a specified time under a restricted license.
 - b. Complete prescribed remedial courses.
 - c. Complete continuing competence requirements for the period of the expired license.
 - d. Pass an examination.

History: Effective April 1, 2006.

General Authority: NDCC 43-26.1-03(5)

Law Implemented: NDCC 43-26.1-09

61.5-02-02-06. Exceptions to registration licensure.

1. The following persons are exempt from North Dakota physical therapy registration licensure requirements when engaged in the following activities:
 - a. A person in a professional education program approved by the board who is pursuing a course of study leading to a degree as a physical therapist and who is satisfying supervised clinical education requirements related to the person's physical therapy education while under onsite supervision of a licensed physical therapist.
 - b. A physical therapist who is practicing in the United States armed services, United States public health service, or veterans administration pursuant to federal regulation for state licensure of health care providers.

- c. A physical therapist who is licensed in another United States jurisdiction of the United States or a foreign-educated physical therapist credentialed in another country if that person is performing physical therapy in connection with teaching or participating in an educational seminar of no more than sixty days in a calendar year.
 - d. A physical therapist who is licensed in another United States jurisdiction of the United States if that person is providing consultation by means of telecommunication to a physical therapist licensed under in North Dakota Century Code chapter 43-26.
2. If aides or students provide physical therapy services other than under direct supervision of a registered licensed physical therapist, they are in violation of North Dakota Century Code chapter ~~43-26~~ 43-26.1.
 3. Upon application to the committee board, a physical therapist currently registered licensed in good standing in another state or jurisdiction, and who is not subject to any pending disciplinary proceeding, may practice physical therapy in North Dakota without obtaining registration licensure from the committee board provided the practice is limited to no more than thirty full or partial days per year. The one-year period starts on the date the board approves the written application is approved by the committee. Prior to any such this limited practice, the physical therapist must apply to the committee board, using forms provided by the committee board, and pay an a twenty-five dollar application fee of twenty-five dollars. The application must include:
 - a. Verified documentation from the appropriate registration authority identifying the requirements for registration in that jurisdiction, confirming that the physical therapist is registered and in good standing in that jurisdiction, and confirming that the physical therapist is not subject to any pending disciplinary proceedings.
 - b. The dates, locations, purpose, employer, and scope of limited practice the physical therapist intends to perform in North Dakota.
 - c. ~~The purpose of the physical therapist's limited North Dakota practice and the physical therapist's employer.~~
 - d. Other information required by the committee board.

History: Effective December 1, 1980; amended effective July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-05, 43-26-08, 43-51-05, 43-51-06~~ 43-26.1-07

61.5-02-02-07. Registration refused, revoked, suspended, or restricted Grounds for disciplinary actions. The board may refuse to license any physical

therapist or physical therapist assistant, may discipline, or may suspend or revoke the license of any physical therapist or physical therapist assistant for any of the following grounds:

1. The committee may refuse, suspend, restrict, or revoke a registration on the grounds stated in North Dakota Century Code section 43-26-11. Violating any provision of this chapter, board rules, or a written order of the board.
2. The committee may refuse to grant registration to any applicant who begins practice as a physical therapist or as a physical therapist assistant prior to being registered to practice in North Dakota. Practicing or offering to practice beyond the scope of the practice of physical therapy.
3. Failing to refer a patient or client to an appropriate practitioner if the diagnostic process reveals findings that are outside the scope of a physical therapist's knowledge, experience, or expertise.
4. Obtaining or attempting to obtain a license by fraud or misrepresentation.
5. Engaging in the performance of substandard physical therapy care due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established.
6. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform components of intervention selected by the supervising physical therapist regardless of whether actual injury to the patient is established.
7. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this chapter and board rules.
8. A determination by the board that a licensee's conviction of an offense has a direct bearing on the licensee's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated as provided under North Dakota Century Code section 12.1-33-02.1.
9. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals, alcohol, or by other causes.
10. Having had a license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country.

11. Engaging in sexual misconduct. For the purpose of this subsection, sexual misconduct includes:
 - a. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant-patient relationship exists, except with a spouse.
 - b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.
 - c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
12. Failing to adhere to the standards of ethics of the physical therapy profession adopted by rule by the board.
13. Charging unreasonable or fraudulent fees for services performed or not performed.
14. Making misleading, deceptive, untrue, or fraudulent representations in violation of this chapter or in the practice of the profession.
15. Having been adjudged mentally incompetent by a court.
16. Aiding and abetting a person who is not licensed in this state in the performance of activities requiring a license.
17. Failing to report to the board, when there is direct knowledge, any unprofessional, incompetent, or illegal acts that appear to be in violation of this chapter or any rules established by the board.
18. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.
19. Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that contain at a minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record, and a discharge plan.
20. Failing to maintain patient confidentiality without the written authorization of the patient or unless otherwise permitted by law. All records used or resulting from a consultation under North Dakota

Century Code section 43-51-03 are part of a patient's records and are subject to applicable confidentiality requirements.

21. Promoting any unnecessary device, treatment intervention, or service resulting in the financial gain of the practitioner or of a third party.
22. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.
23. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.

History: Effective December 1, 1980; amended effective July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-11~~ 43-26.1-13

CHAPTER 61.5-02-03

61.5-02-03-01. Fees.

1. Application fee - not refundable - ~~\$150.00~~ \$200.00.
2. Annual renewal fee - ~~\$60.00~~ \$100.00 for physical therapist therapists and ~~\$40.00~~ \$60.00 for physical therapist assistant assistants.
3. Late renewal fee - \$50.00.

History: Effective December 1, 1980; amended effective July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-05, 43-26-06, 43-26-08, 43-26-09, 43-26-10~~
43-26.1-10

CHAPTER 61.5-03-01

61.5-03-01-01. Continuing education requirement. The ~~committee~~ board shall establish, and revise as it deems necessary, rules and regulations to require some form or system of continuing education as a requirement for ~~registration licensure~~ or ~~reregistration relicensure~~ as a physical therapist or a physical therapist assistant.

History: Effective December 1, 1980; amended effective April 1, 1992; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-05, 43-26-09~~ 43-26.1-03(7)

61.5-03-01-02. Hours, effective date, and requirements. Effective January 31, 1992, all physical therapists and physical therapist assistants must obtain twenty-five contact hours of continuing education every two years to be eligible for ~~registration licensure~~ or ~~reregistration relicensure~~. One contact hour equals sixty minutes of instruction. There may be no carryover of credit hours to the next reporting period. The committee shall determine reporting groups, methods, and deadlines.

History: Effective April 1, 1992; amended effective April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-05, 43-26-09~~ 43-26.1-03(7)

CHAPTER 61.5-03-03

61.5-03-03-01. Verification of compliance.

1. At the January license renewal deadline immediately following their two-year continuing education cycle, registrants shall provide a signed and notarized statement provided by the ~~committee~~ board listing the continuing education courses taken and indicating compliance with the required twenty-five hours of continuing education. The ~~committee~~ board, in its discretion, may require additional evidence necessary from a ~~registrant~~ licensee to verify compliance.
2. The ~~committee~~ board shall periodically select a sample of the ~~registered~~ licensed physical therapists and may request evidence of the continuing education to which they have attested. Documentation may come directly from the ~~registrant~~ licensee or from state or national organizations that maintain those types of records.
3. A person who claims extenuating circumstances in not being able to meet the continuing education requirements shall petition the ~~committee~~ board for consideration of those special conditions.
4. As of January 31, 1992, ~~registrants registering~~ licensees applying for licensure in North Dakota for the first time from other states or countries who do not have twenty-five hours of continuing education credits within the last two years will be required to complete thirteen hours of continuing education within a year of their initial ~~registration~~ licensure in North Dakota, and will thereafter be on the two-year continuing education cycle provided in these rules.

History: Effective April 1, 1992; amended effective July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-05, 43-26-09~~ 43-26.1-03(7)

CHAPTER 61.5-03-04
CONTINUING COMPETENCE

Section

61.5-03-04-01

Evidence of Continuing Competence

61.5-03-04-01. Evidence of continuing competence.

1. Qualification for manual therapy as defined in subsection 3 of North Dakota Century Code section 43-26.1-01 and subsection 6 of North Dakota Administrative Code section 61.5-01-02-01 of these rules, other than high velocity, low amplitude thrust manual therapy, include:
 - a. Graduate of a United States accredited, entry-level physical therapy program.
 - b. Foreign-educated licensees would have to show evidence of entry-level training in manual therapy techniques as part of their curriculum.

2. Qualification for high velocity, low amplitude thrust manual therapy must include one or more of the following:
 - a. Graduate from entry-level doctor of physical therapy program from the university of North Dakota or university of Mary.
 - b. Graduates from other physical therapy programs would have to submit evidence showing that high velocity, low amplitude thrust techniques were included in their entry-level educational program.
 - c. Hold the orthopedic clinical specialist (OCS) or sports clinical specialist (SCS) certification from the American physical therapy association.
 - d. Complete a formal, credentialed manual therapy fellowship or other certification.
 - e. Evidence of post entry-level education in high velocity, low amplitude thrust techniques.
 - f. Evidence of post entry-level experience and self-study in high velocity, low amplitude thrust techniques.

3. In addition to the above criteria, licensees are also bound by the regulations listed in North Dakota Century Code section 43-26.1-13 regarding practicing beyond their scope of practice or performing substandard physical therapy care as being grounds for disciplinary

actions and North Dakota Century Code section 43-26.1-11 concerning patient care management.

History: Effective April 1, 2006.

General Authority: NDCC 43-26.1-03(5)

Law Implemented: NDCC 43-26.1-03(7), 43-26.1-14(1)

CHAPTER 61.5-04-01

61.5-04-01-01. Violations. Complaints and problems about alleged violations of North Dakota Century Code chapter ~~43-26~~ 43-26.1 shall be forwarded to the ~~committee~~ board for its consideration. The ~~committee~~ board shall review and, if necessary, investigate all complaints and allegations that come before it concerning ~~North Dakota Century Code chapter 43-26~~ violations. The ~~committee~~ board may seek the advice and assistance of legal counsel in this review and investigation process. The ~~committee~~ board may direct its executive officer, or other personnel, to act either directly, on its behalf, or to assist others, in filing complaints of North Dakota Century Code chapter ~~43-26~~ 43-26.1 violations with state's attorneys, and to provide assistance and information as required by state's attorneys. The ~~committee~~ board may seek the advice of legal counsel concerning the use of injunctions as a means of preventing or stopping ~~North Dakota Century Code chapter 43-26~~ violations, and may direct legal counsel, on its behalf, to use such remedies.

History: Effective December 1, 1980; amended effective July 1, 2004; April 1, 2006.

General Authority: NDCC ~~43-26-10~~ 43-26.1-03(5)

Law Implemented: NDCC ~~43-26-13~~ 43-26.1-16, 43-26.1-17

ARTICLE 61.5-06

MISCELLANEOUS

<u>Chapter</u>	
<u>61.5-06-01</u>	<u>Terms and Titles</u>
<u>61.5-06-02</u>	<u>Medications</u>

CHAPTER 61.5-06-01 TERMS AND TITLES

<u>Section</u>	
<u>61.5-06-01-01</u>	<u>Terms and Titles</u>

61.5-06-01-01. Terms and titles. A physical therapist shall use the letters "PT" in connection with the physical therapist's name or place of business to denote licensure under North Dakota Century Code chapter 43-26.1. Other letter designations such as "RPT", "LPT", or academic and professional degrees should not be substituted for the regulatory designation of "PT".

1. "PTA" is the preferred regulatory designation of a physical therapist assistant. A physical therapist assistant shall use the letters "PTA" in connection with that person's name to denote licensure under this chapter. A person shall not use the title "physical therapist assistant", the letters "PTA", or any other words, abbreviations, or insignia in connection with that person's name to indicate or imply, directly or indirectly, that the person is a physical therapist assistant unless that person is licensed under this chapter.
2. Except as otherwise provided by law, a person or business entity, and its employees, agents, or representatives, shall not use in connection with that person's or entity's name or activity the words "physical therapy", "physical therapist", "physiotherapist", "registered physical therapist", the letters "PT", "MPT", "DPT", "LPT", "RPT", or any other words, abbreviation, or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this chapter. A person or business entity shall not advertise or otherwise promote another person as being a "physical therapist" or "physiotherapist" unless the individual so advertised or promoted is licensed as a physical therapist under this chapter. A person or business entity that offers, provides, or bills any other person for services shall not characterize those services as "physical therapy" unless the individual performing that service is licensed as a physical therapist under this chapter.
3. The designations "SPT" and "SPTA" should be used for physical therapist students and physical therapist assistant students, respectively, up to the time of graduation.

4. In order to promote consistent communication of the presentation of credentials and letter designations, the preferred order of credentials should be:
 - a. PT/PTA.
 - b. Highest earned physical therapy-related degree.
 - c. Other earned academic degrees.
 - d. Specialist certification credentials in alphabetical order (specific to the American board of physical therapy specialties).

History: Effective April 1, 2006.

General Authority: NDCC 43-26.1-03(5)

Law Implemented: NDCC 43-26.1-15

CHAPTER 61.5-06-02
MEDICATIONS

Section

61.5-06-02-01

Medications

61.5-06-02-01. Medications.

1. A physical therapist may purchase, store, and administer topical medications, including aerosol medications, as part of the practice of physical therapy, but shall not dispense or sell any of the medications to patients. A physical therapist shall comply with any protocols of the United States pharmacopoeia for storage of medications.

2. A valid order or prescription for medication classified as a legend drug is needed before administration to a patient. Physical therapy facilities must work with a pharmacist to assist with proper protocols for storage of medications. A record of dosage form, quantity, and strength of medication administered to each patient is required in the medical record. A list of the legend drugs is available from the board.

History: Effective April 1, 2006.

General Authority: NDCC 43-26.1-03(5)

Law Implemented: NDCC 43-26.1-14(3)

TITLE 67

DEPARTMENT OF PUBLIC INSTRUCTION

APRIL 2006

CHAPTER 67-01-02
DEFINITIONS

Section

67-01-02-01

Definitions

67-01-02-01. Definitions. As used in this title, unless the context otherwise requires:

1. "Department" means the North Dakota department of public instruction.
2. "Superintendent" means the superintendent of public instruction.
3. "Title I" means title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, Pub. L. 107-110, 20 USC 6301 et seq. (2002).

History: Effective April 1, 2006.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

CHAPTER 67-11-01

67-11-01-01. Credentials Credential required. ~~For purposes of school accreditation, a~~ A school that provides driver education must employ a teacher who holds a North Dakota driver education instructor's professional credential as outlined in this chapter ~~or who has an approved major, minor, minor equivalency, or endorsement in driver education issued by the educational standards and practices board.~~

History: Effective February 1, 2000; amended effective June 1, 2002; April 1, 2006.

General Authority: NDCC ~~45.1-02-04, 15.1-02-11, 28-32-02~~ 15.1-02-16(1), 39-06-05

Law Implemented: NDCC ~~45.1-02-04, 15.1-02-11,~~ 15.1-02-16(1), 39-06-05

67-11-01-02. Issuing agency. The issuing agency address driver education instructor's credential is issued by:

Superintendent of Public Instruction
Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

History: Effective February 1, 2000; amended effective April 1, 2006.

General Authority: NDCC ~~45.1-02-04, 15.1-02-11, 28-32-02~~ 15.1-02-16(1), 39-06-05

Law Implemented: NDCC ~~45.1-02-04, 15.1-02-11,~~ 15.1-02-16(1), 39-06-05

67-11-01-03. Duration of credential Types of credentials - Revocation. ~~The North Dakota driver education instructor's professional credential is valid during the period the instructor is a certified teacher and must be renewed each time the instructor's educator's professional license is renewed. An instructor holding a lifetime educator's professional license must renew the driver education instructor's professional credential every five years. If a credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the credential, the credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license. The driver education instructor's professional credential is invalid if the instructor's driving license is revoked or suspended for any period of time during the credentialed period.~~

1. The driver education instructor's credential (DE) is:
 - a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the individual's credential every five years; and

b. Issued to an individual upon satisfying credential standards identified in section 67-11-01-04.

2. If a credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the credential, the credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.
3. The driver education instructor's credential is revoked if the instructor's operator's license is revoked or suspended for any period of time during the credential period. A revoked credential is not revived by the credential holder subsequently obtaining an operator's license that is not suspended or revoked, and a new application for a credential must be submitted.

History: Effective February 1, 2000; amended effective June 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02 15.1-02-16(1), 39-06-05

Law Implemented: NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16(1), 39-06-05

67-11-01-04. Credential standards. The applicant must fulfill all of the following standards to be credentialed under this chapter:

1. ~~Must at all times during the credential period hold~~ Hold a valid regular North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1.;
2. ~~Must at all times during the credential period hold~~ Hold a current, valid nonsuspended and unrevoked operator's license that is not suspended or revoked and that is suitable for the type of vehicle to be used: for instruction;
3. ~~Within five days of receiving oral or written notice of any pending driver's license suspension or revocation, must provide the department with written notice of any pending or actual suspension or revocation.~~
4. ~~Must maintain an insurance policy at least in the amount and type required by North Dakota law, provide a copy of that policy to the department, and provide the department notice if the insurance company intends to cancel the policy.~~
5. ~~Must provide the department a waiver permitting the department to obtain a copy of the driving record maintained by the state of licensure as well as submitting a copy of a driving record with the application and annually thereafter.~~

6. ~~Must have~~ Provide an abstract of the applicant's driving record for the past thirty-six months from a state driver licensing office evidencing a satisfactory driving record free from any conviction during the prior thirty-six months that would constitute the basis for suspension or revocation of the instructor's driving operator's license, and may not have more than three moving traffic violations within the past thirty-six months.
7. ~~4.~~ All teachers of driver education in North Dakota must have Have at least a college-granted minor in driver education from a state-approved program or have taken coursework that includes at a minimum:
- a. ~~Six semester or eight quarter~~ hours consisting of at least one course each in:
 - (1) Classroom driver and traffic education; and
 - (2) In-car instruction; and
 - b. ~~Ten semester or sixteen quarter~~ hours, including chosen from the following:
 - (1) No more than three semester hours ~~or four quarter hours~~ of health, including a maximum of one semester hour ~~or two quarter hours~~ of first aid and two semester hours ~~or three quarter hours~~ of drug education, ~~will be counted;~~
 - (2) No more than three semester hours ~~or four quarter hours~~ of safety education which may include motorcycle education, traffic law, multicar driving ranges, accident prevention, driver training for the handicapped, defensive driving, and field experiences in safety education ~~will be counted;~~
 - (3) No more than two semester hours ~~or three quarter hours~~ of equipment training, which may include driving simulator use and ~~audiovisual education, will be counted~~ educational technology;
 - (4) No more than three semester hours ~~or four quarter hours~~ of classroom management ~~will be counted;~~
 - (5) No more than three semester hours ~~or four quarter hours~~ of psychology, of which adolescent psychology is preferred, ~~will be counted;~~
 - (6) No more than two semester hours ~~or three quarter hours~~ of auto mechanics ~~will be counted; and~~ or

- (7) No more than two semester hours or three-quarter hours of credits received at state or national conferences held by a recognized state or national driver education association will be counted.

History: Effective February 1, 2000; amended effective June 1, 2002; ~~April 1, 2006.~~

General Authority: NDCC ~~15.1-02-04, 15.1-02-11, 28-32-02~~ 15.1-02-16(1), 39-06-05

Law Implemented: NDCC ~~15.1-02-04, 15.1-02-11,~~ 15.1-02-16(1), 39-06-05

67-11-01-05. Application process. ~~To obtain a credential under this chapter, the~~ An applicant shall must submit the following:

1. ~~Complete an A completed application, SFN 9055 form provided by, available on the department of public instruction, including name, social security number, date, address, verification of educator's professional license, driver's license number, police record information related to traffic violations, and driver education-related coursework.~~ instruction's web site;
2. ~~Provide a A copy of an official college transcript that will be used to verify transcripts showing driver education coursework listed on the application.; and~~
3. An abstract of the applicant's driving record for the past thirty-six months issued by a state driver's licensing office.

History: Effective February 1, 2000; amended effective June 1, 2002; ~~April 1, 2006.~~

General Authority: NDCC ~~15.1-02-04, 15.1-02-11, 28-32-02~~ 15.1-02-16(1), 39-06-05

Law Implemented: NDCC ~~15.1-02-04, 15.1-02-11,~~ 15.1-02-16(1), 39-06-05

67-11-01-06. Reconsideration. ~~If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an applicant for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following: Repealed effective April 1, 2006.~~

1. ~~The facts, law, or rule the applicant believes was erroneously interpreted or applied; and~~
2. ~~The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.~~

~~The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.~~

History: Effective February 1, 2000; amended effective June 1, 2002.

General Authority: ~~NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05~~

Law Implemented: ~~NDCC 15.1-02-04, 15.1-02-11, 39-06-05~~

67-11-01-06.1. Renewal requirements. A driver education instructor's credential may be renewed by submitting to the department the following:

1. A completed application, SFN 9055, available on the department of public instruction's web site;
2. A copy of college transcripts, issued after the date the credential being renewed was issued, showing completion of two semester hours of graduate credit from the areas listed in section 67-11-01-04; and
3. An abstract of the applicant's driving record for the past thirty-six months issued by a state driver's licensing office.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-02-11, 15.1-02-16(1), 39-06-05

Law Implemented: NDCC 15.1-02-11, 15.1-02-16(1), 39-06-05

67-11-01-07. Renewal requirements. Repealed effective April 1, 2006.

1. ~~A driver education instructor credential may be renewed by submitting the following:~~
 - a. ~~A renewal application form, SFN 9055, provided by the department of public instruction; and~~
 - b. ~~A copy of official transcripts, issued after the date the credential being renewed was issued, documenting completion of two semester hours of undergraduate or graduate credit from the areas listed in section 67-11-01-04.~~
2. ~~Each credential is valid for the term of the holder's North Dakota educator's professional license.~~

History: Effective June 1, 2002.

General Authority: ~~NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05~~

Law Implemented: ~~NDCC 15.1-02-04, 15.1-02-11, 39-06-05~~

67-11-01-07.1. Reconsideration. If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is

denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within three weeks of mailing the denial. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a reconsideration request.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-02-11, 15.1-02-16(1), 39-06-05

Law Implemented: NDCC 15.1-02-11, 15.1-02-16(1), 39-06-05

CHAPTER 67-11-03.3
TITLE I COORDINATOR CREDENTIAL

Section

<u>67-11-03.3-01</u>	<u>Types of Credentials - Requirements for Title I Coordinator Credentials</u>
<u>67-11-03.3-02</u>	<u>Duties of Title I Coordinators</u>
<u>67-11-03.3-03</u>	<u>Application for Title I Coordinator Credentials</u>
<u>67-11-03.3-04</u>	<u>Renewal of Title I Coordinator Credentials</u>

67-11-03.3-01. Types of credentials - Requirements for title I coordinator credentials.

1. The department issues three credentials for title I coordinator: title I coordinator 1, title I coordinator 2, and title I coordinator 3. A title I coordinator credential is issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the individual's credential every five years. A title I coordinator credential may be obtained to recognize the qualifications and duties of persons who coordinate title I programs but are not paid with title I funds. A title I coordinator credential is required for individuals paid to any extent with title I funds who assume duties as described in subsection 2. A school's consolidated title I application will not be approved if a school employs an individual without a credential when a credential is required.

2. To obtain a title I coordinator 1 credential, a person must:
 - a. Hold a valid North Dakota educator's professional license;
 - b. Have a major or endorsement in elementary, middle school, or secondary education; and
 - c. Have a master's degree in an educational field from a state-approved program.

3. To obtain a title I coordinator 2 credential, a person must:
 - a. Hold a valid North Dakota educator's professional license;
 - b. Have a major or endorsement in elementary, middle school, or secondary education;
 - c. Hold an elementary, middle school, or secondary title I teacher's credential issued under this article, including an initial credential; and
 - d. Have a minimum of three years of title I teaching experience.

4. To obtain a title I coordinator 3 credential, a person must:
 - a. Hold a valid North Dakota educator's professional license; and
 - b. Have a major or endorsement in elementary, middle school, or secondary education.
5. The documentation of each requirement under this chapter must be verified by the department before a credential or renewal credential will be issued.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-02-16(8); 20 USC 6319

Law Implemented: NDCC 15.1-02-16(8); 20 USC 6319

67-11-03.3-02. Duties of title I coordinators.

1. A title I coordinator 1 performs the job duties of coordinating a districtwide or multischool title I program, including development of budgets, preparation of a consolidated title I application, training title I staff, and submitting title I reports, and may also supervise one or more title I teachers.
2. A title I coordinator 2 performs the job duties of a lead title I teacher who participates in coordinating a title I program.
3. A title I coordinator 3 performs the job duties of coordinating a schoolwide title I program, including implementing the schoolwide plan, completing all required paperwork for the schoolwide plan, conducting parent involvement activities, facilitating professional development activities, and conducting the yearly evaluation of the schoolwide plan.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-02-16(8); 20 USC 6319

Law Implemented: NDCC 15.1-02-16(8); 20 USC 6319

67-11-03.3-03. Application for title I coordinator credentials. An applicant for a title I coordinator credential must apply to the department's title I office in the form and manner prescribed by the department.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-02-16(8); 20 USC 6319

Law Implemented: NDCC 15.1-02-16(8); 20 USC 6319

67-11-03.3-04. Renewal of title I coordinator credentials.

1. A credential issued under this chapter is valid only while the credentialed individual holds a valid North Dakota life certificate or North Dakota educator's professional license.

2. An applicant for renewal of a title I coordinator credential who holds a valid five-year North Dakota educator's professional license or a life certificate must:
 - a. Renew the credential prior to the expiration of the applicant's educator's professional license, or every five years if the applicant has a life certificate;
 - b. Submit a completed application in the form and manner prescribed by the department; and
 - c. Participate in department-sponsored title I trainings as evidenced by a certificate of attendance at four or more title I workshops since the date the current credential was issued.

3. An applicant for renewal of a title I coordinator credential who holds a valid two-year North Dakota educator's professional license must:
 - a. Renew the credential prior to the expiration of the applicant's educator's professional license;
 - b. Submit a completed application in the form and manner prescribed by the department; and
 - c. Participate in department-sponsored title I trainings as evidenced by a certificate of attendance at two or more title I workshops since the date the current credential was issued.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-02-16(8); 20 USC 6319

Law Implemented: NDCC 15.1-02-16(8); 20 USC 6319

CHAPTER 67-11-04

67-11-04-01. ~~Library media credential~~ Credentials required. For purposes of school accreditation, a school may employ as a librarian only a person who holds a library media credential as outlined in this chapter or who has been authorized by the North Dakota education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002. An individual holding a library media credential issued under this chapter may serve students in kindergarten through grade twelve.

History: Effective February 1, 2000; amended effective November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-02. Issuing agency. ~~The North Dakota library media credential issuing agency address is~~ issued by:

Superintendent of Public Instruction
Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

History: Effective February 1, 2000; amended effective April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-03. Approval for library media programs. Whenever this chapter refers to "state-approved program", it refers to the process by which the North Dakota education standards and practices board ~~in concert with the department of public instruction shall supervise a system of program approval~~ approves programs at those colleges within the state of North Dakota which provide library media preparation. Preparation from an out-of-state college must be from an approved program for library media in that state and meet or exceed North Dakota standards.

History: Effective February 1, 2000; amended effective May 16, 2000; April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-04. Types of credentials.

1. ~~Library media director credential.~~ The plan of study option to qualify for a library media credential is:

- a. This credential will be known as the LM01 credential.
 - b. The applicant must:
 - (1) ~~Hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-08 and 15.1-13-10 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education;~~
 - (2) ~~Have a master's degree in library science, media education, education, or education administration from a state-approved program; and~~
 - (3) ~~Complete sixteen semester hours of library coursework under subsection 2 of section 67-11-04-05, ten semester hours of coursework under subsection 3 of section 67-11-04-05, and twelve semester hours of coursework under subsection 4 of section 67-11-04-05 from a state-approved program.~~
 - c. ~~The credential is valid only while the individual holds a valid North Dakota educator's professional license. Except as provided in subsection 6, a credential must be renewed each time the educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years.~~
 - a. Issued to an individual licensed to teach or approved to teach by the North Dakota education standards and practices board;
 - b. Issued to an individual who is employed as a librarian in a school that is unable to employ a credentialed librarian and who does not meet the qualifications for an LM01, LM02, or LM03 credential, as required by the total number of students served;
 - c. Issued to an individual who has completed a minimum of six semester hours of undergraduate or graduate credits in library media from subsection 1 of section 67-11-04-05; and
 - d. Issued to an individual who submits a written plan of study for approval to become a credentialed librarian and who annually submits college transcripts showing a minimum of six semester hours of undergraduate or graduate credits in library media until the licensed teacher qualifies for the required credential.
2. Library media specialist credential: The librarian credential (LM03) is:

- a. ~~This credential will be known as the LM02 credential.~~
 - b. ~~The applicant must:~~
 - (1) ~~Hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-08 and 15.1-13-10 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and~~
 - (2) ~~Complete sixteen semester hours of library coursework under subsection 2 of section 67-11-04-05 and ten semester hours of coursework under subsection 3 of section 67-11-04-05 from a state-approved program.~~
 - c. ~~The credential is valid only while the individual holds a valid North Dakota educator's professional license. Except as provided in subsection 6, a credential must be renewed each time the individual's educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years.~~
 - a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the credential every five years;
 - b. Issued to an individual who has completed a minimum of fifteen semester hours of undergraduate or graduate credits in library media from subsection 1 of section 67-11-04-05.
3. ~~Librarian credential. The library media specialist credential (LM02) is:~~
- a. ~~This credential will be known as the LM03 credential.~~
 - b. ~~The applicant must:~~
 - (1) ~~Hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-08 and 15.1-13-10 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and~~

- a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the credential every five years;
 - b. Issued to an individual who holds a master's degree in library science, media education, another field of education, or education administration from a state-approved program; and
 - c. Issued to an individual who has completed a minimum of fifteen semester hours of undergraduate or graduate credits in library media from subsection 1 of section 67-11-04-05, nine semester hours of undergraduate or graduate credits in library media from subsection 2 of section 67-11-04-05, and six semester hours of graduate credits in educational administration under subsection 3 of section 67-11-04-05.
5. Plan of study option to qualify for the library media director, library media specialist, or librarian credentials, in order to accrue the qualification points to satisfy the accreditation requirements. If a credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the credential, the credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

~~If a school is unable to employ a credentialed librarian, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the librarian. A written library plan of study to become a credentialed librarian must be submitted to the department of public instruction and be approved. The licensed teacher must have completed a minimum of one basic library media course, excluding the basic course in children's literature, in order for the plan to be considered for approval. Once the written plan of study is approved, the licensed teacher must submit transcripts documenting completion of a minimum of five semester hours of library media coursework each year, until the licensed teacher qualifies for the required credential. In order for the school to receive library qualification points in the library media services category to satisfy the accreditation requirements, the licensed teacher must follow the plan of study approved by the department of public instruction.~~

6. ~~If a credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the credential, the credential~~

~~will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.~~

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-05. ~~Course preparation for credentials~~ Credential standards.

1. ~~Coursework may be either on the graduate or undergraduate level.~~
2. Coursework required for the all library media director, library media specialist, librarian, and librarian designate credentials and the plan of study option identified in section 67-11-04-04 must be taken from a state-approved library media program and must include at least fifteen semester hours of undergraduate or graduate credits in the following areas:
 - a. ~~Library administration~~ Introduction to the role of the librarian in the school library;
 - b. Reference;
 - c. ~~Classification and cataloging of print materials~~ Selection of materials and collection development;
 - d. ~~Adolescent and children's literature (one literature course is acceptable)~~ Classification and cataloging of library materials; and
 - e. ~~Selection of print materials; and~~ Library administration.
 - f. ~~Utilization of print materials.~~

A minimum of two semester hours must be taken in each area identified in subdivisions a through e.

3. 2. Coursework required for the ~~library media director and library media specialist~~ LM01 and LM02 credentials identified in section 67-11-04-04 must be taken from a state-approved library media program and must include at least nine semester hours of undergraduate or graduate credits in the following areas:
 - a. ~~Classification and cataloging of nonprint materials~~ Conducting research following state and national library standards;
 - b. ~~Selection of print and nonprint materials~~ Current issues in school librarianship; and

- c. ~~Materials for elementary and secondary education; A study of children's literature or young adult literature or reading methods.~~
- d. ~~Communication theory, theory and principles of message design;~~
- e. ~~Special problems in media, a maximum of four semester hours will apply;~~
- f. ~~Reading, listening, viewing, and guidance;~~
- g. ~~Television;~~
- h. ~~Computers and computer-assisted instruction; and~~
- i. ~~Design and production of media is required.~~

A minimum of two semester hours must be taken in each area identified in subdivisions a through c.

4. 3. Coursework required for the ~~library media director~~ LM01 credential identified in section 67-11-04-04 must be taken from a state-approved educational administration program and must include at least six semester hours of graduate credits from two or more courses in the following areas:

- a. ~~Educational administration~~ Personnel supervision;
- b. ~~Elementary and secondary curriculum~~ Policy and educational finance;
- c. ~~Supervision~~ Staff and program evaluation; or
- d. ~~School finance;~~ Curriculum, instruction, and learning theory.
- e. ~~School law;~~
- f. ~~Educational psychology; and~~
- g. ~~Philosophy of education.~~

History: Effective February 1, 2000; amended effective May 16, 2000; April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-06. Application process. An applicant must submit the following:

1. A completed application form, SFN 14236, ~~provided by~~ available on the department of public instruction, ~~including name, social security number, address, telephone number, type of credential applied for, employment information, and signature~~ instruction's web site; and
2. A copy of ~~official~~ college transcripts showing coursework for the desired credential.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-07. Renewal requirements. All library media director, ~~library media specialist, and librarian~~ credentials are renewed by submitting the following:

1. A completed application form, SFN 14236, ~~provided by~~ available on the department of public instruction, ~~including name, social security number, address, telephone number, type of credential applied for, employment information, and signature~~ instruction's web site; and
2. A copy of ~~official~~ college transcripts ~~must be provided documenting~~ showing completion of ~~four~~ two semester hours of ~~undergraduate or graduate credit in the areas of library, media, education, curriculum, or communication and information science~~.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-08. Reconsideration. If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within three weeks of ~~the date of mailing by the department of public instruction~~ of the denial. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

History: Effective February 1, 2000; amended effective November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

CHAPTER 67-11-08

67-11-08-03. Credential standards. Each applicant for a special education director's credential must meet the standards in this section. The documentation on each standard must be verified within the department before any credential will be issued. An applicant must have:

1. A valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10 and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement;
2. A master's degree, preferably in special education or a related field from a state-approved program, but a master's degree in gifted and talented will not be accepted;
3. Basic preparation in one area of special education, excluding gifted and talented, which will entitle the applicant to the special education credential for North Dakota in that area;
4. An additional nine semester hours in more than one other area of special education, excluding gifted and talented;
5. Eight semester hours in school administration or a four-semester-hour internship in administration of special education and two semester hours in school administration. The eight semester hours in school administration must be chosen from courses in school law, administration of the public school, school finance, teacher personnel administration, or a seminar in administration;
6. At least two years of successful professional education employment experience in one area of special education, excluding gifted and talented; and
7. Written recommendations from two persons who supervised the applicant during the applicant's teaching experience.

History: Effective February 1, 2000; amended effective July 1, 2003; April 1, 2006.

General Authority: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

Law Implemented: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; ~~20~~ USG 4412(a)(15) P.L. 108-446 sec. 612(a)(14)

67-11-08-08. Effective dates. Repealed effective April 1, 2006. The issuance of credentials through September 30, 1999, and from October 1, 1999, is as follows:

4. ~~Issuing new credentials:~~

- a. ~~Through September 30, 1999, credentials may be issued based on both the previous standards identified in the guide I laws, policies and regulations for special education for exceptional children (1993) published by the department of public instruction or the new standards and procedures provided in this chapter.~~
 - b. ~~Effective on February 1, 2000, all credentials will be issued based on the standards and procedures provided in this chapter.~~
2. ~~Renewing existing credentials. Effective on February 1, 2000, all credential renewals shall be based on the standards and procedures provided in this chapter.~~

History: ~~Effective February 1, 2000.~~

General Authority: ~~NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09~~

Law Implemented: ~~NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)~~

CHAPTER 67-11-14

67-11-14-05. Effective dates.

1. Effective on December 1, 2003, all certificates will be issued based on the standards and procedures provided in this chapter. Paraprofessionals previously authorized to provide instructional paraprofessional services who continue to work in the same school district must comply with this chapter by July 1, 2005, or must receive an extension from the department, as outlined in subsection 2. Paraprofessionals previously authorized to provide instructional paraprofessional services, who initially begin employment in another school district on or after January 8, 2002, and paraprofessionals initially providing instructional paraprofessional services on or after January 8, 2002, must comply with this chapter immediately.
2. Paraprofessionals previously authorized to provide paraprofessional services who continue to work in the same school district may seek an extension of time to complete their training if the person seeking the extension:
 - a. Was providing paraprofessional services in the same ~~title I school~~ since ~~January 7, 2002, or in the same school district under a title I schoolwide program~~ since January 7, 2002;
 - b. Is pursuing the certificate of completion through the ~~associates degree or two years of higher education~~ option one of the options provided in subsection 2 of section 67-11-14-03;
 - c. Submits a written plan of study or an assurance to the department ~~no later than July 1, 2005~~, documenting that the person ~~has been taking coursework which will qualify the paraprofessional for the certificate of completion by January 8~~ July 1, 2006. ~~The plan of study must include coursework that in addition to any courses previously taken will complete the requirements for the certificate of completion. The plan of study must be provided on letterhead of an accredited institution of higher education and must be signed by the head of the department providing the coursework; and~~
 - d. On or before ~~January 8~~ July 1, 2006, provides the department with the following items:
 - (1) A completed application for paraprofessional certificate of completion form, including the applicant's name, address, telephone number, date of application, type of credential applied for, employment information, and the applicant's signature; and

- (2) A copy of the applicant's official transcripts showing successful completion of an education curriculum ~~satisfactory to meet the requirements for a certification of completion as provided in subsection 2 of section 67-11-14-03, or documentation of the applicant's passing score on a state-approved mathematics, reading, and writing assessment.~~

An extension must be approved by the department before a paraprofessional may work in a program supported by title I funds.
An extension under this subsection is valid only until ~~January 8, 2002~~
July 1, 2006.

History: Effective February 1, 2000; amended effective December 1, 2003; April 1, 2006.

General Authority: NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

Law Implemented: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; ~~20 USC 1412(a)(15)~~ 20 USC 1412(a)(14); 20 USC 6319(c)-(f); 34 CFR 200.58

CHAPTER 67-11-16

67-11-16-03. Credential standards. An applicant for a special education strategist credential must meet the standards set out in this section. The documentation on each standard must be verified by the department before a special education strategist credential is issued. The standards are as follows:

1. An applicant must hold a valid elementary, middle level, or secondary North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-17 and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or ~~minor~~ or an endorsement in elementary or secondary education.
2. Areas of preparation of teachers in special education strategist include the coursework listed in this subsection. The coursework must be taken primarily at the graduate level, from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subsection. Because not all of these are course titles, applicants must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as special education strategists must hold either a ~~general~~ an elementary, middle level, or secondary educator's professional license. Special education strategists with a middle level or secondary educator's professional license must have an elementary mathematics methods course and an elementary reading methods course and must complete a practicum as outlined by the applicant's college or university and required in subsection 3. The credential requires at least thirty semester hours of graduate credit. The credits must include coursework in each of these areas:
 - a. Exceptional children and youth;
 - b. Transition to adult life;
 - c. Assessment, program planning, special needs students;
 - d. Introduction to learning and behavior problems;
 - e. Practicum in school problems, special education;
 - f. Inclusive methods;
 - g. Behavior management for special needs students;
 - h. Collaborative relationships;
 - i. Special education law;

- j. Assistive technology; and
 - k. Advanced assessment.
3. Each candidate for a credential must also fulfill each of the following:
- a. For specific learning disability:
 - (1) Advanced methods, specific learning disability.
 - (2) Practicum, specific learning disability, which must be taken after other qualifications are complete.
 - b. For emotional disturbance:
 - (1) Advanced methods, emotional disturbance.
 - (2) Practicum, emotional disturbance, which must be taken after other qualifications are complete.
 - c. For mental retardation:
 - (1) Advanced methods, mental retardation.
 - (2) Practicum, mental retardation, which must be taken after other qualifications are complete.

History: Effective November 1, 2002; amended effective November 19, 2003; April 1, 2006.

General Authority: NDCC ~~15.1-02-14~~ 15.1-02-16(14), 15.1-18-05, 15.1-32-09

Law Implemented: NDCC ~~15.1-02-14~~ 15.1-02-16(14), 15.1-18-05, 15.1-32-09; ~~20-USC 1412(a)(14)~~ P.L. 108-446 sec. 612(a)(14)

CHAPTER 67-15-02

67-15-02-01. Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Applicant" means a school seeking approval for reconfiguration of instructional days.
2. "Curricular instruction", as used in subsection 2 of North Dakota Century Code section 15.1-06-04, means the actual class period, including study hall, but does not include time to pass between classes, lunch periods, or other time that is not devoted directly to student instruction.
3. ~~"Department" means the North Dakota department of public instruction.~~
4. "School" means a public school located in North Dakota and subject to the regulatory authority of the state of North Dakota.
5. ~~"Superintendent" means the North Dakota superintendent of public instruction.~~

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 15.1-06-05, 28-32-02

Law Implemented: NDCC 15.1-06-05

67-15-02-03. Application. Application for a reconfigured calendar must be made on SFN 58170 which is available on the department of public instruction's web site. The application must include the school name, signatures of the administrator and board chairman, and the information that is responsive to the considerations to be made by the superintendent, including how the proposed reconfigured school calendar relates to the criteria listed in section 67-15-02-05. At a minimum, each applicant shall include the following in the application:

1. The goals and objectives of the reconfiguration program;
2. Documentation of community input into the proposed program, including written correspondence on the subject, summaries of oral contacts, and a summary of any discussions at public meetings or hearings;
3. A cost-benefit study, including potential for savings in transportation and energy costs;
4. The number of hours of instructional time for the most recent school year completed prior to the application;
5. A proposed school calendar that will assure high school students will receive one thousand thirty-eight hours of instructional time and

- elementary students will receive nine hundred fifty-one and one-half hours of instructional time;
6. A class schedule for each grade level;
 7. A contingency plan for makeup days and allowances for storms and other school closings;
 8. A professional development plan; and
 9. An evaluation plan, including specific plans to evaluate:
 - a. Student performance;
 - b. Student use of facilities;
 - c. Community use of facilities;
 - d. The success rate of any innovations;
 - e. The change in educational opportunities for students;
 - f. The change in academic opportunities for students; and
 - g. Any costs savings attributable to the reconfiguration, including savings in staffing, energy, transportation, and maintenance costs.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 15.1-06-05, 28-32-02

Law Implemented: NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

67-15-02-04. Application process.

1. A completed SFN 58170 ~~department~~ must be submitted to the ~~department at~~:

Superintendent of Public Instruction
Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440
2. To be considered by the superintendent, an application under this chapter must be received in the department on or before March first of the year prior to the year for which a reconfigured school calendar is sought.
3. The superintendent will review each application and approve, approve with modifications as provided under section 67-15-02-06, or deny the application.

4. Notice of the superintendent's decision will be mailed by first-class mail to the applicant on or before April fifteenth of the year prior to the year for which a reconfigured school calendar is sought.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 15.1-06-05, 28-32-02

Law Implemented: NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

67-15-02-05. Evaluation of applications. Each application for a reconfigured school calendar must be evaluated by the superintendent using the following criteria:

1. The impact of the reconfiguration plan on the period of instructional time. Under this criterion the superintendent will consider:
 - a. ~~Whether the period of instructional time for elementary students under the proposed plan is equal to or greater than the period of instructional time for elementary students during the previous school year;~~
 - b. ~~Whether the period of instructional time for high school students under the proposed plan is equal to or greater than the period of instructional time for high school students during the previous school year;~~
 - c. Whether the elementary students will receive at least nine hundred fifty-one and one-half hours each year under the plan; and
 - d. b. Whether the high school students will receive at least one thousand thirty-eight hours of instructional time.
2. The superintendent must also find one of the following to be a likely result of the reconfiguration:
 - a. That the proposed plan encourages innovation. Under this criterion the superintendent will consider:
 - (1) Educational trends relevant to the proposed reconfiguration;
 - (2) Research relevant to the proposed reconfiguration; and
 - (3) The likelihood that instructional staff will develop and use innovative means of instruction.
 - b. That the proposed plan will improve educational opportunities for students. Under this criterion the superintendent will consider:
 - (1) Educational opportunities available to students under the existing configuration; and

- (2) Educational opportunities available to students if the reconfiguration plan is adopted.
- c. That the proposed plan will enhance the academic opportunities of the students attending the school. Under this criterion the superintendent will consider:
 - (1) Academic opportunities available to students under the existing configuration; and
 - (2) Academic opportunities available to students if the reconfiguration plan is adopted.
- d. That the proposed plan will allow current students greater flexibility in the use of the school facilities. Under this criterion the superintendent will consider:
 - (1) Existing facility use by current students;
 - (2) The flexibility in use of school facilities available to current students under the existing configuration; and
 - (3) The flexibility in use of school facilities available to current students if the reconfiguration plan is adopted.
- e. That individuals or groups other than current students will have greater flexibility in the use of the school facilities. Under this criterion the superintendent will consider:
 - (1) Existing facility use by individuals and groups other than current students;
 - (2) The flexibility in use of school facilities available to individuals or groups other than current students under the existing configuration; and
 - (3) The flexibility in use of school facilities available to individuals or groups other than current students if the reconfiguration plan is adopted.
- f. That the reconfiguration plan will result in significant cost-savings to the district applying. Under this criterion the superintendent will consider:
 - (1) Present costs of the district;
 - (2) Proposed reductions in the district's costs; and

- (3) The difference between the present costs to the district and the proposed costs under the reconfigured plan will be considered significant if the present costs are anticipated to exceed the proposed costs by forty dollars per student.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 15.1-06-05, 28-32-02

Law Implemented: NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

67-15-02-07. Term of reconfiguration plan - Application for extension.

If approved, a school's reconfiguration plan is valid for one year. A school may request the superintendent to extend the reconfiguration plan for ~~one~~ an additional year. If granted, the first extension after the initial year is valid for one school year. All extensions thereafter are valid for five school years. A request for extension will be granted only if:

1. The application for extension is received by the superintendent prior to July first of the year after the year in which the reconfiguration was implemented;
2. The school followed the reconfiguration plan as approved by the superintendent; and
3. The school can demonstrate:
 - a. The requisite number of instructional hours for elementary and high school students has been delivered; and
 - b. ~~The instructional hours during the reconfigured school year were at least equal to the instructional hours in the prior year; and~~
 - c. ~~During the reconfigured year~~ Under the reconfiguration plan either:
 - (1) Innovation occurred in the school;
 - (2) Enhanced educational or academic opportunities were provided to the students;
 - (3) There was greater flexibility in the use of the school by students, nonstudents, or organizations; or
 - (4) The school had substantial financial savings as a result of the reconfiguration.

A request for extension of a reconfiguration plan may also be granted if a school demonstrates that the program has not resulted in a negative outcome in any of

the four evaluation criteria set out in subdivision b of subsection 3 and more time is needed to assure a sufficient evaluation period.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 15.1-06-05, 28-32-02

Law Implemented: NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

CHAPTER 67-19-01

67-19-01-01. Definitions. As used in this chapter:

1. "Accredited warned status" means the status of a school that is cited on:
 - a. A required criterion;
 - b. An accrual of less than eighty-five percent of the total points assigned to the ~~optional~~ point-value standards and criteria; ~~and or~~
 - c. ~~The lack of achievement~~ An accrual of at least less than fifty percent of the point ~~value~~ values assigned in any one section.
2. ~~"Appropriate director" means the respective director or assistant director of the approval and accreditation unit in the department.~~
3. ~~"Department" means the department of public instruction.~~
4. "Not accredited status" means a school does not meet the qualifying standards and criteria by enrollment categories.
5. ~~3.~~ 3. "Unit of credit" means a minimum of one hundred twenty clock-hours of instruction for all courses except the natural sciences and career and technical courses which require one hundred fifty clock-hours of instruction.
6. ~~"Vocational education unit of credit" means a minimum of one hundred fifty clock-hours of instruction.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-02. Accreditation status. A school earning the status of accredited must:

1. ~~A school seeking the status of accredited with commendation must:~~
 - a. ~~Contact the appropriate director;~~
 - b. ~~Conduct a formal school improvement process, which must:~~
 - (1) ~~Be approved in advance by the appropriate director; and~~
 - (2) ~~Have the results that demonstrate that the educational program supports the philosophy, goals, and objectives that have been adopted by the school;~~

- c. ~~A school shall be accredited with commendation upon department approval of the school improvement plan, which must be submitted within one year of the team visitation; and~~
 - d. ~~A school must maintain the accredited with commendation status.~~
2. ~~A school seeking the status of accredited must:~~
- a. ~~Contact the appropriate director; and~~
- b. ~~(1)~~ 1. Meet all the required standards and criteria;
- (2) 2. ~~Accrue at least eighty-five percent of the total point values assigned to the optional point-value standards and criteria that apply to the school; and~~
- (3) 3. ~~Achieve~~ Accrue at least fifty percent of the point values assigned to ~~each in sections subdivisions a through h of subsection 6 of section 67-19-01-13 and 67-19-01-14.~~

History: Effective January 1, 2000; amended July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-03. Loss of accreditation status - Penalties.

1. ~~If the citations for the accredited warned status are not removed by the next date of classification, the school will not be accredited. An accredited warned status will be awarded. A school failing to meet the required and minimum point-value standards and criteria in section 67-19-01-02 will be classified accredited warned.~~
2. ~~A school must not be accredited if the citations for remove the accredited warned status for from the previous year have not been removed. A not accredited status must be awarded or the school will be classified not accredited.~~
3. ~~A high school that is not accredited on or after July 1, 1994, is not entitled to the amounts resulting from applying the weighting factor as provided by the foundation aid payment formula.~~
4. ~~A high school that remains not accredited for the second year will have an additional two hundred dollars per student deducted from the amount per student received for the previous year. An additional two hundred dollars deduction per student per year will continue for each additional year the school remains not accredited. Penalties for loss of accreditation status are provided by statute in North Dakota Century Code sections 15.1-27-08 and 15.1-27-09.~~

5. ~~An elementary school that is not accredited on or after July 1, 1992, will have the elementary foundation aid reduced by two hundred dollars per student each year that the school is not accredited.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-40.1-08, 15-40.2-06, 15-45-02~~
15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-40.1-06, 15-40.1-08, 15-45-02~~
15.1-02-11, 15.1-27-06, 15.1-27-07, 15.1-27-08, 15.1-27-09

67-19-01-04. Nonclassified. A school not seeking accreditation must will be declared nonclassified.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-05. Identification of accreditation status. The accreditation status of all schools must be provided in the educational directory and listed on the annual accreditation reports ~~and licenses~~ issued to the schools.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-06. Classification by school grade description and authority.

1. A school must be classified as a secondary school, middle level or junior high school, or an elementary school dependent upon the grade organization in that school. Accreditation standards and criteria must be applied according to the classification declared organization of a school. A school district retains the ~~sole~~ discretion to organize grades in the configurations that are most appropriate for that district.
2. Configurations for school ~~classifications~~ organizations are:
 - a. ~~Secondary~~ A secondary school ~~as organized~~ may be grades seven through twelve, ~~eight through twelve, nine through twelve, or ten~~ include any consecutive combination of grades from seven through twelve. ~~If grade seven or eight is served in any combination with grades nine through twelve, the standards and criteria for grades seven through twelve must be reviewed as one unit.~~
 - b. ~~Middle~~ A middle level or junior high school ~~as organized~~ may be grades five through eight, ~~six through eight, seven and eight, six through nine, or seven~~ include any consecutive combination of grades from five through nine.

- (1) ~~If grades seven and eight are served in a five or six through eight unit and grade nine is not part of the organization, the elementary standards and criteria and point values will be applied for determination of accreditation status.~~
- (2) ~~A school containing only grades seven and eight will be reviewed upon the middle level or junior high school standards.~~
- (3) ~~If grade nine is served in a six or seven through nine unit, the middle level and junior high school standards and criteria and point values will be applied for determination of accreditation status.~~

c. Elementary ~~An elementary school as organized may be include any consecutive combination of grades from kindergarten, kindergarten through grade six, or kindergarten through grade eight.~~

- (1) ~~If kindergarten or grades one through six are served singly or in any combination, the elementary standards and criteria and point values will be applied.~~
- (2) ~~If grades seven and eight are served in any combination kindergarten through grade eight, the standards and criteria and numerical point values for grades seven and eight will be considered with the elementary school.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-07. Enrollment categories.

1. For organizations listed in subsection 2 of section 67-19-01-06, the enrollment categories are as follows:
 - a. Secondary:
 - (1) One hundred or fewer;
 - (2) One hundred one through two hundred fifty; and
 - (3) Two hundred fifty-one or more.
 - b. Middle level ~~and~~ or junior high school:
 - (1) One hundred or fewer;
 - (2) One hundred one through two hundred fifty; and

(3) Two hundred fifty-one or more.

c. Elementary:

(1) Twenty-four or fewer;

(2) Twenty-five through one hundred;

(3) One hundred one through two hundred fifty; and

(4) Two hundred fifty-one or more.

2. ~~If there are two or more of the same type of schools (i.e., three elementary schools in a district), the student enrollment in the largest school must determine the appropriate category of standards and criteria. A school may request a waiver of an accreditation standard for the following school year as provided in North Dakota Century Code section 15.1-06-08.~~

3. ~~A school may request to remain in the next lower enrollment category to meet standards if there have been some changes or anticipated changes in student enrollment or school organization and if the current enrollment does not exceed the limit of the lower enrollment category by twenty percent or more.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-08. Qualifications and time assignments for administrators, counselors, and library media specialists. The qualifications and time assignments for administrators, counselors, and library media specialists must be based upon the total number of students being served. Specific sections of the accreditation standards that address this are sections 67-19-01-16, 67-19-01-18, 67-19-01-19, 67-19-01-20, 67-19-01-21, 67-19-01-22, ~~67-19-01-24, 67-19-01-26, 67-19-01-28, 67-19-01-40, and 67-19-01-41.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-09. Types of standards and criteria - Penalties. Repealed effective July 1, 2006.

4. ~~Required standards and criteria are those that must be reviewed annually. A school that is cited on a required criterion must be accredited warned. Citations for required standards and criteria must be removed by March thirty-first of the following school year or the school must be not accredited.~~

2. ~~Optional standards and criteria are those that have been assigned numerical point values and will be reviewed on a two-year cycle. A school must:~~
 - a. ~~Accrue eighty-five percent of the total points; and~~
 - b. ~~Achieve at least fifty percent of the point values assigned in each section.~~
3. ~~A school which does not accrue eighty-five percent of the total points or does not achieve at least fifty percent of the point values assigned in any one section must be accredited warned. The accreditation report of a school in this category must confirm an accrual of eighty-five percent of the total points and an achievement of at least fifty percent of the point values assigned to each section by March thirty-first of the following school year, or the school must be not accredited.~~

History: Effective January 1, 2000.

General Authority: NDCC ~~15-21-04.1, 15-40.1-08, 15-45-02~~

Law Implemented: NDCC ~~15-21-04.1, 15-40.1-08, 15-45-02~~

67-19-01-10. Review cycle.

1. ~~Each A school must submit the professional personnel forms (MIS03) to be reviewed annually for the required standards and criteria and biennially, in conjunction with the accreditation report, for the optional standards and criteria. required accreditation information each fall;~~
2. ~~The school must be notified each year on or before March thirty-first on its accreditation status. The school must have ten days to respond in writing to provide information to correct the citation. A school will be reviewed on all standards and criteria in section 67-19-01-13 or 67-19-01-14 annually;~~
3. ~~The accreditation status as provided in section 67-19-01-02 will be reported to each school by March thirty-first of each school year; and~~
4. ~~Corrections must be sent to the department and postmarked no later than April thirtieth or the reported school status will be retained.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-11. Appeals procedure. Repealed effective July 1, 2006.

1. ~~A school may appeal the decision on the accreditation status by May first to the superintendent of public instruction. The appeal must be submitted in writing to the appropriate state director of school approval~~

~~and accreditation. The state director must forward the appeal to the state accreditation committee.~~

- ~~2. The state accreditation committee must forward its recommendation regarding the appeal to the superintendent of public instruction by June fifteenth. The committee must consist of one member appointed by the executive board from each of the following organizations:~~
 - ~~a. North Dakota school boards association.~~
 - ~~b. North Dakota association for school administrators.~~
 - ~~c. North Dakota association for elementary school principals.~~
 - ~~d. North Dakota association for secondary school principals.~~
 - ~~e. North Dakota education association (two -- elementary and secondary).~~
 - ~~f. North Dakota association for supervision and curriculum development.~~
 - ~~g. North Dakota Indian education association.~~
- ~~3. The superintendent of public instruction must issue the final decision to the school by June thirtieth.~~

History: Effective January 1, 2000.

General Authority: NDCC 15-21-04.1, 15-45-02

Law Implemented: NDCC 15-21-04.1, 15-45-02

67-19-01-13. Calculation tables for secondary, middle level, and or junior high schools.

1. The calculation tables outline the standards for secondary schools and middle level and junior high schools ~~and~~. The tables identify the required standards and the point values assigned to each item in the sections for the optional standards point-value standards and criteria that apply to the school.
2. The accreditation standards and criteria that are identified as required, indicated by the letter R in subsection 6, are those which must be met by are required of all schools annually.
3. The optional point-value standards and criteria are designed to provide some flexibility to schools. ~~These standards, which have been assigned point values, are reviewed biennially.~~

4. A school must accrue at least eighty-five percent of the total point values overall points that apply to the school and achieve accrue at least fifty percent of the point value points assigned to each section.
5. Schools must accrue point values points for the standards that apply directly to them (e.g., For example, a school employing an assistant superintendent is eligible for the two points assigned to that standard) if the person holding the position is qualified for the position.
6. Calculation tables for secondary, middle level, and or junior high are:

		Points
a.	<u>School Education improvement: process</u>	<u>R</u>
	(1) Mission or philosophy, goals, and objectives (seven-year cycle)	R
	(2) A plan for school evaluation (seven-year cycle)	R
	(3) School improvement plan (seven-year cycle)	R
	(4) Progress report (submitted biennially)	R
b.	<u>Administration:</u>	
	(1) <u>Superintendent:</u>	
	(a) <u>Qualifications</u>	R
	(b) <u>Time assignment</u>	5
	(2) Administrative assistant or assistant <u>Assistant</u> superintendent qualifications (Accrual of 2 points if employed and qualified)	2
	(3) Curriculum or instructional area director qualifications (Accrual of 2 points if employed and qualified)	2
	(4) (3) <u>Principal:</u>	
	(a) <u>Qualifications</u>	R
	(b) <u>Time assignment</u>	5
	(5) (4) <u>Assistant principal:</u>	
	(a) <u>Qualifications</u> (Accrual of 2 points if employed and qualified)	2
	(b) <u>Time assignment</u> (<u>Accrual of 2 points if qualified</u>)	2
c.	<u>Instructional personnel:</u>	
	(1) <u>Teacher preparation:</u>	<u>R</u>

	(a) Minimum teacher preparation	R
(2)	(b) Specific subject area <u>Specialized credential</u> preparation:	
	Maximum accrual for enrollment category:	
	0-100	10
	101-250	15
	251+	20
	(Loss of 2 points for each teacher lacking appropriate credential)	
(2)	Professional growth policy	4
(3)	Professional development plan	4 R
d.	Instructional program:	
(1)	Written curriculum plan	R
(2)	<u>Curriculum:</u>	
	(a) Two-year course offerings (<u>high school only</u>)	R
	(b) <u>Curriculum subjects and time allotment (middle level or junior high only)</u>	R
(3)	Class size:	
	Maximum accrual for enrollment category:	
	0-100	10
	101-250	15
	251+	20
	(Loss of 1 point allowance per class over the three percent allowance per teacher)	
e.	Student evaluation <u>plan</u> :	R
(1)	Written program	R
(2)	Standardized testing:	
	(a) Grades 9-12, achievement test	4
	(b) Grade 7 or 8:	
	{1} Achievement test	2
	{2} Aptitude test	2
f.	Pupil personnel services:	
(1)	Written program <u>Pupil personnel services plan</u>	R
(2)	Coordinator	R
(3)	Counseling and guidance services:	
	(a) Counselor qualifications	3

	(b) Counselor time assignment (Accrual of 3 points if qualified)	3
g.	Library media services:	
	(1) Written program <u>Library media services plan</u>	R
	(2) Media personnel <u>Librarian:</u>	
	(a) Staff qualifications <u>Qualifications</u>	3
	(b) Time assignment (Accrual of 3 points if qualified)	3
	(3) Expenditures	2
h.	School policies - <u>handbooks</u> :	
	(1) Handbooks:	
	(1) (a) Teacher handbook	2
	(2) (b) Student and parent handbook	2
	(2) Attendance policy	2
	(3) Promotion and retention policy	2

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-14. Calculation tables for elementary schools.

1. The following calculation tables outline the standards for elementary schools. The table identifies the required standards and the point-value standards and criteria that apply to the school.
2. The accreditation standards and criteria which are identified as required, indicated by the letter R, in section 67-19-01-13 are those which must be met by are required of all schools within the timelines established.
2. 3. The optional point-value standards and criteria are designed to provide some flexibility to schools. These standards, which have been assigned point values, are reviewed biennially.
3. 4. A school must accrue at least eighty-five percent of the total point values overall points that apply to the school and achieve accrue at least fifty percent of the point-value points assigned to each section.
4. 5. Schools must accrue point-values points for the standards that apply directly to them (e.g., For example, a school employing an assistant superintendent is eligible for the two points assigned to that standard) if the person holding the position is qualified for the position.
5. 6. Calculation tables for elementary schools are:

	Points
a. <u>School Education</u> improvement: <u>process</u>	R
(1) Mission or philosophy, goals, and objectives (seven-year cycle)	R
(2) A plan for school evaluation (seven-year cycle)	R
(3) School improvement plan (seven-year cycle)	R
(4) Progress report (submitted biennially)	R
b. Administration:	
(1) Superintendent (if employed):	
(a) Qualifications	R
(b) Time assignment	5
(2) Assistant superintendent qualifications: (Accrual of 2 points if employed and qualified)	2
(3) Curriculum or instructional area director qualifications: (Accrual of 2 points if employed and qualified)	2
(4) Principal:	
(3)	
(a) Qualifications	R
(b) Time assignment	5
(5) (4) Assistant principal (if employed):	
(a) Qualifications <u>(Accrual of 2 points if employed and</u> <u>qualified)</u>	2
(b) Time assignment <u>(Accrual of 2 points if qualified)</u>	2
c. Instruction <u>Instructional</u> personnel:	
(1) Teacher preparation:	
(a) Minimum teacher preparation	R
(2) (b) Specific subject area <u>Specialized credential</u> <u>preparation:</u> Maximum accrual for enrollment category:	
0-100	10
101-250	15
251+	20

(Loss of 2 points for each teacher lacking
specific preparation appropriate credential)

- ~~(2)~~ Professional growth policy 4
- (3) Professional development plan 4 R
- d. Instructional program:
 - (1) Written curriculum plan R
 - (2) Curriculum subjects and time allotment R
 - (3) Class size:
 - Maximum accrual for enrollment category:
 - 0-100 10
 - 101-250 15
 - 251+ 20
 - ~~(4)~~ Grade levels per teacher 6
 (Loss of 1 point per teacher)
- e. Student evaluation:
 - (1) ~~Written program~~ Student evaluation plan R
 - (2) ~~Standardized testing:~~ Readiness - kindergarten and first grade 2
 - ~~(a)~~ Grades 1-6:
 - [1] Achievement test 2
 - [2] Aptitude test 2
 - ~~(b)~~ Readiness - kindergarten and first grade 2
- f. Pupil personnel services:
 - (1) ~~Written program~~ Pupil personnel services plan R
 - (2) Coordinator R
 - ~~(3)~~ Counseling and guidance services:
 - ~~(a)~~ Counselor qualifications 3
 - ~~(b)~~ Counselor time assignment 3
 (Accrual of 3 points if qualified)
- g. Library media services:
 - (1) ~~Written program~~ Library media services plan R
 - (2) Librarian:
 - (a) Qualifications 3
 - (b) Time assignment 3
 (Accrual of 3 points if qualified)
 - ~~(3)~~ Expenditures 2
- h. School policies - handbooks:

- | | | |
|-----|---------------------------------|---|
| (1) | Handbooks: | |
| (1) | (a) Teacher handbook | 2 |
| (2) | (b) Student and parent handbook | 2 |
| (2) | Attendance policy | 2 |
| (3) | Promotion and retention policy | 2 |

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-02, 15-21-04.1~~ 15.1-02-11

67-19-01-15. School program Education improvement process. ~~The school program education improvement process must meet the needs of all students in public and private schools~~ the school. ~~The plan for school education improvement must be established as a result of a local assessment that leads to the development of appropriate learner and program outcomes and must describe how the plan will lead to improved student achievement at each the school. Schools may use collaborative means to determine the extent to which these indicators of effective schooling are present and enhance the quality of education in the school.~~

1. ~~The school must have a written statement of the mission or philosophy, goals, and objectives which is the governing document for the school and its programs. It must be developed and reviewed periodically by the school administrators, staff, and school board; students; parents; and community members. The cycle of education improvement is conducted over a five-year period with reports submitted to the department.~~

2. ~~For the evaluation of the total program, the school must have a written plan that must be reviewed and revised at least once every five years and a copy which is submitted to the department. The written plan must identify:~~
 - a. ~~The goals for the evaluation; and~~

 - b. ~~The procedures and methods to be used which include the instruments, people involved, timeline, and how the findings will be analyzed. The five-year cycle includes peer visitation and consultation.~~

3. ~~The school must have a written school improvement plan. The written school improvement plan must evaluate school improvement and must include the improvement goals, activities, timeline, persons responsible, and evaluation. The plan must be reviewed and revised at least once every five years and submitted to the department. The cycle results in three reports from peer reviewers external to the school: a team chair report, a first team visitation report, and a second team visitation report.~~

4. ~~The school shall:~~
 - a. ~~Conduct an annual review of the written school improvement plan;~~
 - b. ~~Revise the plan as necessary; and~~
 - c. ~~Submit a progress report on the biennial accreditation report. The cycle includes two reports from the school: an education improvement plan following the team chair visit and a final response to the second team visitation report.~~
5. The annual accreditation review is based on the school maintaining progress in its cycle by submitting the required reports.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-16. Administration - Superintendent qualifications and time assignments.

1. Qualifications:
 - a. ~~Public~~ A public high school district, parochial or private high school must employ a superintendent who has ~~an administrative a superintendent's~~ an administrative a superintendent's credential, AD01 or ~~AD02~~ ADP2.
 - b. ~~Graded~~ A graded elementary district, parochial or private elementary school may employ a superintendent. If so employed, the superintendent must have ~~an administrative a superintendent's~~ an administrative a superintendent's credential, AD01 or ~~AD02~~ ADP2.
2. Time assignments for superintendents based on school enrollment for all grades.
 - a. Enrollment two hundred fifty or fewer. A superintendent must devote a minimum of one-half of the instructional day to functions of the superintendency (180 minutes per day or 900 minutes per week).
 - b. Enrollment two hundred fifty-one through four hundred. A superintendent must devote a minimum of two-thirds of the instructional day to functions of the superintendency (240 minutes per day or 1200 minutes per week).
 - c. Enrollment four hundred one or more. A superintendent must devote full time to functions of the superintendency (360 minutes per day or 1800 minutes per week), of which a maximum of

one-sixth of the instructional day may be devoted to instructional activities.

3. ~~With the approval of the department, two~~ Two or more school districts or a consortium of schools may share a superintendent if the superintendent is:
 - a. ~~Assigned~~ The superintendent is assigned to full-time administration and supervision; and
 - b. ~~Has an administrative~~ The superintendent has a superintendent's credential, AD01 or ~~AD02~~ ADP2.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-02, 15-21-04.1~~ 15.1-02-11

67-19-01-17. Qualifications of an administrative assistant or assistant superintendent. An ~~administrative assistant or~~ assistant superintendent must have an ~~administrative~~ a superintendent's credential, AD01 or ~~AD02~~, or a master's degree in the assigned area ADP2.

History: Effective January 1, 2000; amended July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-18. Administration - Secondary school principal qualifications and time assignments.

1. A secondary school principal administering a school with enrollments in ~~grades seven through twelve, eight through twelve, nine through twelve, or ten through twelve~~ as described in section 67-19-01-06 must have the following qualifications within the person's enrollment classification:
 - a. Enrollment one hundred or fewer. A secondary school principal must have a secondary principal's credential, SP01, SP02, SP03, or SPP2. An individual holding an SP03 credential may continue to renew the credential only while the individual serves in the same school. The SP03 is no longer issued as an initial credential.
 - b. Enrollment one hundred one through two hundred fifty. A secondary school principal must have a secondary principal's credential, SP01, SP02, or SPP2.
 - c. Enrollment two hundred fifty-one or more. A secondary school principal must have a secondary principal's credential, SP01 or SPP2.

2. The time assignment for the secondary school principal within the person's enrollment classification must be as follows:
 - a. Enrollment one hundred or fewer. A secondary school principal must devote a minimum of one-third of the instructional day to the principalship (120 minutes per day or 600 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
 - b. Enrollment one hundred one through two hundred fifty. A secondary school principal must devote a minimum of ~~one-half~~ two-thirds of the instructional day to the principalship (~~180~~ 240 minutes per day or ~~900~~ 1200 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
 - c. Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of full time to the principalship (360 minutes per day or 1800 minutes per week). At least one-half of that time must include activities related to providing building level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.
3. Time assignments for shared secondary school principal. The time assignments for a secondary principal serving two schools or employed in a school that has a shared superintendent must be as follows according to enrollment category:
 - a. Enrollment ~~ninety-nine~~ one hundred or fewer. A secondary school principal must devote a minimum of one-third of the instructional day to the principalship (120 minutes per day or 600 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
 - b. Enrollment one hundred one through two hundred fifty. A secondary school principal must devote a minimum of two-thirds time of the instructional day to the principalship (240 minutes per day or 1200 minutes per week) of which at least one-half of that time must include activities related to providing building level instructional leadership.
 - c. Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of full time to the principalship (360 minutes per day or 1800 minutes per week) of which at least one-half of that time must include activities related to providing building level instructional leadership.
4. ~~Secondary~~ An assistant secondary school ~~assistant~~ principal administering a school with enrollments in ~~grades seven through~~

~~twelve, eight through twelve, nine through twelve, or ten through twelve. as described in section 67-19-01-06 must meet the qualifications and time:~~

a. ~~Qualifications by enrollment category: An assistant secondary school principal must have a secondary principal's credential, SP01, SP02, or SPP2.~~

~~(1) Enrollment two hundred fifty one through five hundred. A secondary school assistant principal must have a secondary principal's credential, SP02.~~

~~(2) Enrollment five hundred one or more. A secondary school assistant principal must have a secondary principal's credential, SP01.~~

b. ~~Time assignments by enrollment category The time assignment for the assistant secondary school principal within the person's enrollment classification must be as follows:~~

~~(1) Enrollment five hundred one through seven hundred fifty. A secondary school assistant principal must devote a minimum of one-half of the instructional day to the assistant principalship (180 minutes per day or 900 minutes per week).~~

~~(2) Enrollment seven hundred fifty-one or more. A secondary school assistant principal must devote full time to the assistant principalship (360 minutes per day or 1800 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-19. Administration - Middle level ~~and~~ or junior high school principal and assistant principal - Qualifications and time assignments.

1. Qualifications by enrollment categories are as follows:

a. Enrollment one hundred or fewer. A middle level or junior high school principal must have an elementary or a secondary principal's credential, ~~EP03 or SP03~~ EP01, EP02, EPP2, SP01, SP02, or SPP2. An individual holding an EP03 or SP03 may continue to renew the credential only while the individual serves in the same school. The EP03 or SP03 is no longer issued as an initial credential.

- b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02 or, EPP2, EP03, SP01, SP02, SP03, or SPP2.
 - c. Enrollment two hundred fifty-one or more. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01 or, EPP2, SP01, or SPP2.
2. Time assignments by enrollment categories are as follows:
- a. Enrollment one hundred or fewer. A middle level or junior high school principal must devote a minimum of one-third of the instructional day to the principalship (120 minutes per day or 600 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
 - b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must devote a minimum of ~~one-half~~ two-thirds of the instructional day to the principalship (~~180~~ 240 minutes per day or ~~900~~ 1200 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
 - c. Enrollment two hundred fifty-one or more. A middle level or junior high school principal must devote full time to the principalship (360 minutes per day or 1800 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.
3. A An assistant middle level or junior high school ~~assistant~~ principal must have an elementary or a secondary principal's credential, EP01 or, EP02, EPP2, SP01, SP02, or SPP2.
4. Time assignments by enrollment categories are as follows:
- a. Enrollment five hundred through seven hundred fifty. A middle level or junior high school assistant principal must devote a minimum of one-half of the instructional day to the assistant principalship (180 minutes per day or 900 minutes per week) of which at least one-half of that time must include activities related to providing building level instructional leadership.
 - b. Enrollment seven hundred fifty-one or more. A middle level or junior high school assistant principal must devote full time to the assistant principalship (360 minutes per day or 1800 minutes per week), of which at least one-half of that time must include activities related

to providing building level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.

History: Effective January 1, 2000; amended July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-20. Administration - Elementary school principal qualifications and time assignments.

1. Qualifications by enrollment categories are as follows:
 - a. Enrollment twenty-four or fewer. An elementary school principal must have a North Dakota educator's professional license with a major, minor, or an endorsement in elementary education.
 - b. Enrollment twenty-five through one hundred. An elementary school principal must have an elementary principal's credential, EP01, EP02, EP03, or EPP2. An individual holding an EP03 may continue to renew the credential only while the individual serves in the same school. The EP03 is no longer issued as an initial credential.
 - c. Enrollment one hundred one through two hundred fifty. An elementary school principal must have an elementary principal's credential, EP01, EP02, or EPP2.
 - d. Enrollment two hundred fifty-one or more. An elementary school principal must have an elementary principal's credential, EP01 or EPP2.

2. ~~Time assignments are calculated by multiplying the number of full-time equivalent licensed personnel by the minimum time allotment, which is fifteen minutes. If the principal is also teaching, that time would not be included in the calculation. Time assignments by enrollment categories are as follows~~ The time assignment for the elementary school principal within the person's enrollment classification must be as follows:
 - a. Enrollment twenty-four or fewer. Time should be provided for the performance of administrative duties.
 - b. ~~Enrollment twenty-five or more:~~ Enrollment twenty-five through one hundred. An elementary school principal must devote a minimum of one-third of the instructional day to the principalship (120 minutes per day or 600 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.

- (1) ~~For one school. Twelve minutes per day per full-time equivalent licensed person.~~
- (2) ~~For two schools or another assignment. Fifteen minutes per day per full-time equivalent licensed person.~~

c. Enrollment one hundred one through two hundred fifty. An elementary school principal must devote a minimum of two-thirds of the instructional day to the principalship (240 minutes per day or 1200 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.

d. Enrollment two hundred fifty-one or more. An elementary school principal must devote a minimum of full time to the principalship (360 minutes per day or 1800 minutes per week). At least one-half of that time must include activities related to providing building level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.

3. ~~The elementary school principal must devote one-half of the time assigned as principal to activities related to providing building level instructional leadership.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-21. Administration - Shared elementary school principal - Elementary school principal qualifications and time assignments. The time assignments for the elementary school principal serving two schools or employed in a school that has a shared superintendent must be ~~fifteen minutes per day per full-time equivalent licensed person.~~ as follows according to enrollment category:

1. **Enrollment twenty-four or fewer.** Time should be provided for the performance of administrative duties.
2. **Enrollment twenty-five through one hundred.** An elementary school principal must devote a minimum of one-third of the instructional day to the principalship (120 minutes per day or 600 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
3. **Enrollment one hundred one through two hundred fifty.** An elementary school principal must devote a minimum of two-thirds of the instructional day to the principalship (240 minutes per day or 1200 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.

4. Enrollment two hundred fifty-one or more. An elementary school principal must devote a minimum of full time to the principalship (360 minutes per day or 1800 minutes per week). At least one-half of that time must include activities related to providing building level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-22. Administration - Assistant elementary school principal - Elementary school principal qualifications and time assignments.

1. An assistant elementary school principal must have an elementary principal's credential at least applicable to the next lower enrollment category ~~by the date of issuance of the classification letter for the following school year.~~
2. Time assignments are as follows:
 - a. If a principal serves in more than one building or has another assignment other than teaching, there must be an assistant principal assigned in that building. Time devoted to the functions of the assistant principal is not regulated but must be commensurate with the assigned duties and documented to correspond to assigned duties.
 - b. For a school with an enrollment of six hundred or more, an elementary school assistant principal must devote one-half of the instructional day to the principalship (180 minutes per day), of which at least one-half of that time must include activities related to providing building level instructional leadership.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-29.1. Instructional personnel - Specialized credential preparation. Secondary, middle level or junior high, or elementary schoolteachers must comply with the following:

1. Special education personnel. A teacher who provides special education services must have a major in special education, or a special education credential, or a letter of approval issued by the department in the area services are provided by the teacher.
2. Special teachers of reading. A remedial or title I teacher must have an appropriate reading credential.

3. Special teachers of mathematics. A remedial or title I teacher must have an appropriate mathematics credential.

History: Effective July 1, 2006.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

~~67-19-01-30. Professional growth policy -- Staff development plan. A written school district plan must be adopted which describes a program for professional development. The plan must include a description of the procedures, the activities, and the timeline for completion of activities. The plan must be reviewed at least once every five years and kept on file for onsite review.~~

- ~~1. Each school board must establish and implement a policy of professional growth for the teachers in the school board's district.~~
- ~~2. The following are provided as minimum standards in the establishment of such a policy:
 - ~~a. College credit. All teachers must earn a minimum of four semester or six quarter hours of college credit each five years.~~
 - ~~b. In-service. All teachers must participate in sixty-four clock hours of in-service related to the teaching assignment during each five-year period. At the option of the school district, college credit earned above the minimum four semester or six quarter hours may be substituted for in-service. One semester hour of college credit must equal sixteen clock hours of in-service.~~
 - ~~c. Procedures must be developed to ensure the monitoring and enforcement of the professional growth policy. The policy must delineate the penalties for failure to comply.~~
 - ~~d. The school administrator must file a current copy of the professional growth policy with the department.~~~~
- ~~3. A written school district plan must be adopted which describes a program for staff development. The plan must include a description of the procedures, the activities, and the timeline for completion of activities. A copy of the plan must be completed and kept on file for onsite review.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC 15-21-04.1, 15-45-02 15.1-02-11

Law Implemented: NDCC 15-21-04.1, 15-45-02 15.1-02-11

67-19-01-31. Written curriculum plan for kindergarten through grade twelve.

1. A school must have a written plan for curriculum assessment, development, implementation, and evaluation. The plan must include a description of the procedures, the activities, and the timeline for implementation. A copy of the The plan must be completed reviewed at least once every five years and kept on file for onsite review.
2. ~~The curriculum adopted by the district must:~~
 - a. ~~Be based upon the district's mission statement, philosophy, goals, and objectives;~~
 - b. ~~Have a written statement of philosophy, goals, and objectives for each subject;~~
 - c. ~~Provide for articulation of a curriculum for kindergarten through grade twelve;~~
 - d. ~~Assure that the instructional resources and activities are matched to the philosophy, goals, and objectives for each subject; and~~
 - e. ~~Provide for periodic evaluation and revision of each subject.~~
3. ~~If a school elects to use an outcomes-based approach, the school may state the outcomes in addition to the district mission or philosophy, goals, and objectives. Outcomes would include the following:~~
 - a. ~~Exit outcomes, which means those outcomes that describe what every student should know and be able to demonstrate;~~
 - b. ~~Program or subject level outcomes, which means those outcomes that describe what students should know and be able to demonstrate in a specific subject such as math or in an area such as fine arts;~~
 - c. ~~Course outcomes, which means those outcomes that describe what students should know and be able to demonstrate upon completion of a specific course such as seventh grade geography or grade five;~~
 - d. ~~Unit outcomes, which means those outcomes, covering a quarter or a semester, within a course or grade that describe the general themes that are important within the course; and~~
 - e. ~~Lesson outcomes, which means those outcomes that are very specific to a course or grade and describe short-term outcomes that cover only a few days of instruction.~~

4. ~~Each school must have available for information and reference a current edition of a manual of K-12 course codes & descriptions, obtained from the department. The manual identifies the titles and code numbers for courses that have been approved by the department and includes a philosophy for each subject area and a description of each course. In formulating the written plan, schools shall consult the kindergarten through grade twelve course codes and descriptions and content area standards available on the department's web site.~~
5. ~~3. Special projects, experimental programs, and exploratory programs are recommended whenever possible in addition to meeting minimal requirements. Provision for experimental programs is provided in the kindergarten through grade twelve course codes and descriptions available on the department's web site.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-32. ~~Secondary school requirements~~ Instructional program - Enrollments in grades ~~seven~~ nine through twelve.

1. ~~Grades nine through twelve:~~ A curriculum for all secondary school students in grades nine through twelve must assure each student access to a minimum of five units of credit per year.
2. ~~Grades nine through twelve:~~ The minimum units of credit listed for each course area must be taught in each school at least once every two years:
 - a. English language arts four units.
 - b. Mathematics four units.
 - c. Science four units.
 - d. Social studies three units.
 - e. ~~Music one unit~~
 - f. Physical education one unit.
 - g. f. Health one-fourth unit.
 - g. Foreign language one unit.
 - h. Fine arts one unit, however at least one unit of music must be offered every four years.

- i. Career and technical education one unit.
3. ~~Grades nine through twelve.~~ A secondary school must provide additional units of elective credit. The number of units is determined by the enrollment categories as follows:
- a. ~~Enrollment categories, grades nine through twelve:~~
- (1) a. Eighty or fewer - seven units from two course areas;
 - (2) b. Eighty-one through one hundred fifty - nine units from two course areas;
 - (3) c. One hundred fifty-one through three hundred fifty - eleven units from three course areas; and
 - (4) d. Three hundred fifty-one or more - thirteen units from four course areas.
- b. ~~The elective courses must be selected from the following:~~
- (1) ~~Art;~~
 - (2) ~~Business education;~~
 - (3) ~~Computer education;~~
 - (4) ~~Driver and traffic safety education;~~
 - (5) ~~Economics and the free enterprise system;~~
 - (6) ~~Modern languages;~~
 - (7) ~~Family and consumer sciences;~~
 - (8) ~~Industrial arts or technology education;~~
 - (9) ~~Vocational occupational programs (as referenced on the MIS03):~~
 - (a) ~~Agribusiness;~~
 - (b) ~~Health education;~~
 - (c) ~~Vocational marketing and education;~~
 - (d) ~~Family and consumer sciences;~~
 - (e) ~~Business and office technology; and~~

~~(f) Trade and industrial education; and~~

~~(10) Other courses as approved by the department.~~

~~e. 4. Schools must count for purposes of the minimum two-year course offering those courses in which students are enrolled which are provided through cooperative arrangements between or among schools or and approved by the department or the state board for vocational education.~~

~~4. Grades seven and eight required courses:~~

~~a. A student must be enrolled for a minimum time of instruction per week in the following areas:~~

- | | | |
|----------------|----------------------------------|--------------------------------|
| (1) | English language arts | two hundred minutes |
| (2) | Mathematics | two hundred minutes |
| (3) | Science | two hundred minutes |
| (4) | Social studies | two hundred minutes |
| (5) | Physical education | eighty minutes |

~~b. Students in grades seven and eight require additional reading, writing, speaking, and listening activities in order to continue to develop effective communication skills. When appropriate, additional English language arts time must be provided above the suggested minimum. Reading, writing, speaking, and listening activities must be incorporated into all subject areas.~~

~~c. A student must be enrolled in health education for a minimum of 3600 minutes or sixty clock hours in grade seven or eight, or both.~~

~~5. Grades seven and eight elective courses:~~

~~a. Music must be made available to all students, with a minimum of 3600 minutes or sixty clock hours of music taught in grade seven or eight, or both.~~

~~b. A minimum of two semester or one hundred twenty clock hours of instruction in courses from one or a combination of the following courses must be available as elective courses:~~

- ~~(1) Art;~~
- ~~(2) Agribusiness;~~
- ~~(3) Business education;~~

- (4) Computer education;
- (5) Modern languages;
- (6) Family and consumer sciences;
- (7) Industrial arts or technology education; and
- (8) Other courses as approved by the department or the state board for vocational and technical education, or both.

~~e. A student in grade seven or eight must not be assigned to a study hall for more than one period a day.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-21-02

67-19-01-34. Middle level or junior high school Instructional program - Enrollments in grades five through seven and eight.

1. Grades ~~five through seven and~~ seven and eight required courses. A student must be enrolled for a minimum time of instruction per week in the following areas:
 - a. English language arts two hundred minutes.
 - b. Mathematics two hundred minutes.
 - c. Science two hundred minutes.
 - d. Social studies two hundred minutes.
 - e. Physical education eighty minutes.
 - f. Health fifty minutes.
2. ~~Students in grades five through eight require additional reading, writing, speaking, and listening activities in order to develop effective communication skills. Additional English language arts time must be included above the minimum. Reading, writing, speaking, and listening activities must be incorporated into all subject areas.~~
3. ~~A student must be enrolled in health education for a minimum of 3600 minutes or sixty clock hours in grade seven or eight, or both.~~
4. Grades ~~five through seven and~~ seven and eight elective additional courses:

- a. ~~Music must be available to all students, with a minimum of 3600 minutes or sixty clock hours of music taught:~~
- (1) For a minimum of one hundred minutes per week in grade seven or:
 - (2) For a minimum of one hundred minutes per week in grade eight; or both
 - (3) For a minimum of fifty minutes per week in grade seven and for a minimum of fifty minutes per week in grade eight.
- b. A minimum of ~~three semester or one hundred eighty clock hours~~ two hundred minutes per week of instruction in courses from one or a combination of the following ~~courses~~ must be available as elective ~~courses~~:
- (1) Art;
 - (2) Agribusiness;
 - (3) Business education;
 - (4) Computer education;
 - (5) Modern languages;
 - (6) Family and consumer sciences;
 - (7) ~~Industrial arts or technology~~ Technology education; and
 - (8) Other elective additional courses as approved by the department ~~or the state board for vocational and technical education, or both.~~
- c. A middle level or junior high school student must not be assigned to a study hall for more than one period a day.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-35. Elementary school instructional program - Enrollments in kindergarten through grade eight ~~six.~~

1. ~~If grade seven or eight is included in the elementary school organizational unit, the curriculum for middle level or junior high school as defined in section 67-19-01-34, grades seven and eight, must be provided for grade seven and eight students.~~

2. Kindergarten through grade six. Specific requirements regarding the length of the minimum instructional time per week for all subject areas are:

a. Kindergarten (two and ~~one-half~~ three-quarters hours per day or ~~750~~ 825 minutes per week, equivalent);

b. Primary (grades one through three)
2.

	1st	2nd	3rd
Language arts	650	650	650
Mathematics	200	200	200
Social studies	100	100	100
Science	60	60	60
Health	40	40	40
Music	90	90	90
Physical education	90	90	90
Art	45	45	45
Unallocated time may be used for:	375	375	375

Unallocated time may be used for:

- (1) a. ~~Pupil-teacher-planning~~ Planning and guided learning;
- (2) b. ~~The initiation or expansion of~~ Initiating or expanding a subject area;
- (3) c. ~~The provision of~~ Providing elective offerings; and
- (4) d. ~~The provision of~~ Providing pupil personnel services.

e. Intermediate (grades four through six)

3.

	4th	5th	6th
Language arts	460	420	420
Mathematics	200	200	200
Social studies	200	200	200
Science	160	200	200
Health	80	80	80
Music	90	90	90
Physical education	90	90	90
Art	45	45	45
Unallocated time may be used for:	325	325	325

Unallocated time may be used for:

- ~~(1) a.~~ Pupil-teacher planning Planning and guided learning;
- ~~(2) b.~~ The initiation or expansion of Initiating or expanding a subject area;
- ~~(3) c.~~ The provision of Providing elective offerings; and
- ~~(4) d.~~ The provision of Providing pupil personnel services.

~~d.~~ The above time allotments are based upon a five and one-half hour day.

e. 4. Thirty minutes of supervised free-play recess may be counted as part of the ninety minutes of physical education for kindergarten grades one through grade three.

~~f.~~ Music and physical education may be eighty minutes per week in elementary schools that have programs affiliated with secondary programs.

~~g.~~ A kindergarten half-day program must be two and one-half hours per day or 750 minutes per week, equivalent, with a curriculum planned and implemented with attention to the children's different needs, interests, experiences, and developmental levels.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-36. Class size.

1. Secondary and middle level ~~and~~ or junior high school:

a. Class size is recommended to be twenty-five students but may not exceed thirty students.

~~b.~~ A school unit is allowed three percent of the total number of classes taught to exceed thirty students to a maximum of thirty-four students per class without citation.

~~c.~~ Science and ~~vocational~~ career and technical education classes must not exceed the capacity of the learning stations provided.

~~d.~~ c. Instrumental and vocal music classes are exempt from the class size standard.

2. Elementary school:

a. ~~Maximum classroom~~ Classroom enrollment, one grade level per teacher:

- (1) Kindergarten through grade three, ~~twenty-five students, with class-size is~~ recommended to be twenty students but may not exceed twenty-five; and
 - (2) Grades four through eight, ~~thirty students, with class size is~~ recommended to be twenty-five students but may not exceed thirty.
- b. Maximum classroom enrollment, two grade levels per teacher:
- (1) Kindergarten through grade three, twenty students; and
 - (2) Grades four through eight, twenty-five students.
- c. Maximum classroom enrollment, three grade levels per teacher, kindergarten through grade eight, is fifteen students.
- d. Maximum classroom enrollment, four grade levels per teacher, kindergarten through grade eight, is ten students.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-38. ~~Standardized testing~~ Student evaluation.

1. ~~Grades nine through twelve. A nationally norm-referenced standardized achievement test must be administered at any two grade levels or as established by the state plan for testing.~~
2. ~~Grades seven and eight. A nationally norm-referenced standardized group achievement test and a nationally norm-referenced standardized group aptitude test must be administered in grade seven or eight, or both. Both the achievement test and aptitude test must be administered at the same grade level to all students.~~
3. ~~Grades one through six. A nationally norm-referenced standardized achievement test and nationally standardized group aptitude test must be administered to two grade levels each year in any of the elementary grades one through six. The achievement and aptitude tests must be administered at the same grade level to all students. A school district shall develop a plan for use of standardized test scores and other available data to enable instructional personnel and supervisors to plan curriculum, to improve the instructional program, to enhance student performance, to provide for special needs of students, and to report student progress to parents and the community. The plan must be reviewed at least once every five years and be kept on file for onsite review.~~

4. 2. Kindergarten or grade one. A standardized readiness test must be administered in either kindergarten or grade one, whichever is the initial point of formal education.

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-39. Pupil personnel services.

1. Each ~~school district~~ district must provide a pupil personnel services ~~program plan~~, which ensures students' needs are being met in counseling and guidance services, social and psychological services, and health services.
2. A ~~school district~~ district must have a written description of the pupil personnel services ~~program plan~~ which is developed and reviewed periodically in cooperation with the staff members from counseling and guidance, social and psychological, and health services. The written ~~program plan~~ plan must be on file with the pupil personnel services coordinator, must be reviewed at least once every five years, and kept on file for onsite review. In school districts with enrollments of one through twenty-four students, a copy of the written ~~program plan~~ plan must be on file with the department of public instruction. The written ~~program plan~~ plan must include:
 - a: ~~Mission or philosophy;~~
 - b: ~~Goals and objectives;~~
 - c: ~~The scope of services, personnel, and resources;~~
 - d: ~~The schedule and time assignments of services that will be provided; and~~
 - e: Health and immunization records the scope of services, personnel, and resources; schedule and time assignments of services that will be provided; and health and immunization records.
3. The ~~counseling and guidance, social and psychological, and health pupil personnel~~ services must be coordinated by a credentialed school counselor, superintendent, principal, or special education unit director. The classroom teacher may coordinate the services in elementary school districts with enrollments of one through twenty-four students.

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-40. Counseling and guidance services.

1. Qualifications for school counseling and guidance personnel employed in a secondary, middle level or junior high, or elementary school.
 - a. The qualifications for counseling and guidance personnel are determined by the total number of students in the schools served:
 - (1) School district enrollment of one through twenty-four. A credentialed counselor is not required. However, the written program plan as provided for in subsection 2 of section 67-19-01-39.2 67-19-01-39 must state what access the student has to counseling services by credentialed or licensed mental health professionals.
 - (2) Enrollment of twenty-five through two hundred fifty. A counselor must be a licensed teacher and must have a CD16 counselor designate credential ~~with sixteen semester hours of graduate core counseling courses as indicated in subdivision d of subsection 1 of section 67-11-05-05~~ or have an approved written plan of study on file with the department of public instruction as provided for in subdivision b.
 - (3) Enrollment of two hundred fifty-one or more. A counselor must be a licensed teacher and must have a CG01 or CG1G or CG03 or CG3G credential for a high school, a CG01 or CG1G or CG02 or CG2G or CG03 or CG3G credential for a middle level or junior high school, ~~a CG03 credential for any grade level organization~~ CG02 or CG2G or CG03 or CG3G credential for an elementary school, or have an approved written plan of study on file with the department of public instruction as provided for in subdivision b. Services may also be provided in accordance with North Dakota Century Code section ~~15-36-18~~ 15.1-13-23 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.
 - b. If a school is unable to employ a credentialed counselor ~~or counselor designate~~, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the counselor designate. A written plan of study to become a credentialed counselor ~~or counselor designate~~ must be submitted to the department of public instruction and must be approved as described in section 67-11-05-04 - school counselor credentials. ~~The licensed teacher must have completed a minimum of one graduate core counseling course from a state-approved school counseling program in order for the plan to be considered for approval. Once the written plan of study is approved, the licensed teacher must submit transcripts documenting completion of a minimum of five semester hours of graduate core counseling coursework, as listed in subdivision d of subsection 1 of~~

~~section 67-11-05-05, each year until the teacher obtains the required credential. In order for the school to receive counselor qualification points in the pupil personnel services category to satisfy accreditation requirements, the licensed teacher must maintain an approved plan of study.~~

2. The time assignment must be provided by a qualified counselor and is determined by the total number of students served:
 - a. ~~Secondary, middle level or junior high, and kindergarten through grade twelve schools~~ The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school counselor must be provided for each four hundred fifty students.
 - b. ~~Elementary school sixty minutes per day or three hundred minutes per week for each one hundred students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school counselor must be provided for each five hundred students.~~ A school district with enrollment of one through twenty-four must submit annually a copy of its written program plan as described in subsection 2 of section 67-19-01-39 to the department of public instruction, which includes classroom guidance activities based on the same time assignment.
 - c. ~~A~~ In an elementary school, a qualified elementary school counselor (CG02 or CG2G or CG03 or CG3G) or counselor designate must provide at least fifty percent of the required counselor time assignment. Other licensed counselors or licensed social workers may be used to meet the remaining fifty percent required counselor time assignment. Time in excess of the accreditation standard may be provided by either a licensed counselor or a licensed social worker included in the school's written program plan as described in subsection 2 of section 67-19-01-39.

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-41. Library media services.

1. Each school must provide a library media program services plan which ensures that students and staff are effective users of ideas and information.
2. A school must have a written description of the library media program services plan, developed and reviewed periodically in cooperation with the library and instructional staff and maintained at the school district

level, which includes: scope of services, personnel, resources, and equipment, and schedule and time assignments of services that will be provided.

- a. ~~A mission or philosophy;~~
- b. ~~Goals and objectives;~~
- c. ~~The scope of services, personnel, resources, and equipment; and~~
- d. ~~The schedule and time assignments of services that will be provided.~~

3. Qualifications for school library media personnel employed in a secondary, middle level or junior high, elementary, or centralized (kindergarten through grade twelve) library:

- a. The qualifications for librarians are determined by the total number of students in the schools served:

- (1) Enrollment of one through twenty-four. A librarian is not required; however, the library media services plan as provided in subsection 1 of section 67-19-01-41 must state what access students have to library materials and services.

- (2) ~~Enrollment of twenty-five through one hundred. A librarian must be a licensed teacher and must have an approved plan of study as indicated in subdivision b.~~

- (3) ~~Enrollment of one hundred one through two hundred fifty. A librarian must be a licensed teacher and must have an LM03, LM02, LM01, or an approved plan of study librarian credential with sixteen semester or twenty-four quarter hours in library media education.~~

- (4) (3) Enrollment of two hundred fifty-one or more. A librarian must be a licensed teacher and must have an LM01 library media director or LM02 library media specialist credential or an approved plan of study. The LM01 credential requires a master's degree and at least twenty-six semester hours or thirty-nine quarter hours in library media education and twelve semester or eighteen quarter hours in education. The LM02 credential requires twenty-six semester or thirty-nine quarter hours in library media education.

- b. If a school is unable to employ a credentialed librarian, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the librarian. A written library plan of study to become a credentialed librarian must be submitted

to the department of public instruction and must be approved as described in section 67-11-04-04 - school library media credentials. ~~The licensed teacher must have completed a minimum of one basic library media course, excluding the basic course in children's literature, in order for the plan to be considered for approval. Once the written plan of study is approved, the licensed teacher must submit transcripts documenting completion of a minimum of five semester hours of library media coursework each year, until the teacher qualifies for the required credential. In order for the school to receive library qualification points in the library media services category to satisfy the accreditation requirements, the licensed teacher must maintain an approved plan of study.~~

4. ~~Time~~ The time assignment: ~~Students must be served provided by a qualified librarian in a library as organized, e.g., kindergarten through grade twelve, kindergarten through grade six, or grades seven through twelve or nine through twelve: and is determined by the total number of students served.~~
- a. ~~Enrollment of one through twenty-four. Library materials must be available to all students. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school librarian must be provided for each four hundred fifty students.~~
 - b. ~~Enrollment of twenty-five through one hundred. Ninety minutes per day or four hundred fifty minutes per week. A school with enrollment of one to twenty-four must make library media materials and services available to all students as indicated in the district's library media services plan.~~
 - c. ~~Enrollment of one hundred one through one hundred sixty. One hundred twenty minutes per day or six hundred minutes per week.~~
 - d. ~~Enrollment of one hundred sixty one through two hundred forty. One hundred eighty minutes per day or nine hundred minutes per week.~~
 - e. ~~Enrollment of two hundred forty one or more. Proportionate time allowances may be calculated (sixty minutes per day or three hundred minutes per week for each eighty students, or fraction thereof).~~
 - f. Library ~~In any school with a full-time librarian, library media aide time assignments may be used for the to fulfill time assignments requirements in excess of one full-time librarian serving in a centralized kindergarten through grade twelve, grades seven through twelve, or grades nine through twelve library.~~

~~g. d.~~ A In an elementary school, a qualified elementary school librarian must provide at least fifty percent of the total library program time assignment for organization, curriculum, service, coordination, and supervision responsibilities. Library media aide time assignments may be used to meet the total library time assignments in excess of the fifty percent librarian serving in an elementary kindergarten through grade six or kindergarten through grade eight library.

~~5. An annual expenditure for books, newspapers, periodicals, and the rental or purchase of audiovisual materials and software, exclusive of textbooks and equipment, must average not less than ten dollars per student.~~

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

67-19-01-42. School policies - Handbooks ~~-Attendance -Promotion and retention.~~

1. Each district must develop a teacher handbook and a student-parent handbook. The handbooks must be reviewed at least once every five years and kept on file for onsite review.

2. Handbooks, kindergarten through grade twelve:

a. Teacher handbook. A school must provide to each teacher a current handbook containing the rules and regulations that pertain to the duties and responsibilities of the teacher ~~and the.~~ The handbook may include policies for the general operation of the school.

b. A school must provide to each student a current student and parent handbook that includes the school mission or philosophy, goals, ~~and objectives and,~~ student rights and responsibilities, ~~and policies~~ on parent and student issues that include:

~~(1) Attendance;~~

~~(2) Discipline;~~

~~(3) Promotion and retention; and~~

~~(4) Graduation requirements.~~

~~2. A written school board policy must be adopted which specifies the attendance standards for all students in the school.~~

3. ~~A written school board policy must be adopted which states the standards and procedures for the promotion and retention of all students in the school attendance, discipline, promotion and retention, and graduation requirements.~~

History: Effective January 1, 2000; amended effective July 1, 2006.

General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11

CHAPTER 67-20-01

67-20-01-01. Eligibility. ~~School districts that wish to receive proportionate payments for high school summer school programs must make application with the department of public instruction no later than June first each year. Application for driver education program approval must be made with the drivers license and traffic safety division of the department of transportation which forwards the application to the department of public instruction for final approval. A school district must apply for and receive approval from the superintendent of public instruction for a summer high school program. To be considered by the superintendent, an application must be received no later than June first or before the start of the program, whichever is earlier.~~

History: Effective May 1, 1999; amended effective April 1, 2006.

General Authority: NDCC ~~28-32-02, 15-40.1-07~~ 15.1-27-19

Law Implemented: NDCC ~~15-40.1-07~~ 15.1-27-19

67-20-01-02. Applications Application. ~~Application forms provided by the department of public instruction for all summer programs require the name of school; county; district number; name of the person responsible for the summer program; telephone number; opening and closing date of the summer program; schedule of courses; teacher's names, social security numbers, majors, minors, teaching certificate numbers with expiration dates, assignments, and schedules; a statement of how the summer session will improve the schedule and program for the regular school year; and the school district superintendent's signature. The department of transportation provides the driver education summer application or forms may be obtained from the department of public instruction if they are not available from the department of transportation for a summer high school program must be made on SFN 50091, which is available on the department of public instruction's web site.~~

History: Effective May 1, 1999; amended effective April 1, 2006.

General Authority: NDCC ~~28-32-02, 15-40.1-07~~ 15.1-27-19

Law Implemented: NDCC ~~15-40.1-07~~ 15.1-27-19

67-20-01-03. Courses. All courses in the summer high school program must meet the following criteria:

1. Each course must be part of the high school curriculum as adopted by the school board and must be offered and available to all high school students.
2. Each course must be selected from approved courses listed in the department's "A Manual of K-12 Course Codes and Descriptions", 1998-revised department of public instruction's kindergarten through grade twelve course codes and descriptions available on the department's web site.

3. Courses that are not listed in the department's "~~A Manual of K-12 Course Codes and Descriptions~~", 1998 revised, department of public instruction's kindergarten through grade twelve course codes and descriptions are considered experimental projects courses and must be approved by the department as a course prior to the first day the summer program is in session in accordance with procedures outlined in the department's "~~A Manual of K-12 Course Codes and Descriptions~~", 1998 revised.
4. ~~Physical education and science courses must be approved prior to the first day of class. The course outline, description of activities, and schedule must be submitted to the department for approval by May first.~~
5. Teachers must be qualified licensed to teach or approved to teach in accordance with North Dakota Century Code section ~~15-41-25~~ 15.1-06-06.
5. A summer school program in driver's education will be approved only if the driver's education instructor submits to the department an abstract of the instructor's driving record from a state driver's license office showing not more than three moving traffic violations in the previous thirty-six months.

History: Effective May 1, 1999; amended effective April 1, 2006.

General Authority: NDCC ~~28-32-02, 15-40.1-07~~ 15.1-27-19

Law Implemented: NDCC ~~15-40.1-07~~ 15.1-06-06, 15.1-27-19

67-20-01-04. Scheduling. Summer high school programs must be conducted between the closing date of the regular school year and the beginning date of the next regular school term year.

History: Effective May 1, 1999; amended effective April 1, 2006.

General Authority: NDCC ~~28-32-02, 15-40.1-07~~ 15.1-27-19

Law Implemented: NDCC ~~15-40.1-07~~ 15.1-27-19

67-20-01-05. Students. Students must have completed grade eight and not have graduated from high school for the district to qualify for proportionate payments.

History: Effective May 1, 1999; amended effective April 1, 2006.

General Authority: NDCC ~~28-32-02, 15-40.1-07~~ 15.1-27-19

Law Implemented: NDCC ~~15-40.1-01(1), 15-40.1-07~~ 15.1-27-19

67-20-01-06. Monitoring. The department of public instruction will ~~may~~ monitor summer high school programs by ~~reviewing documentation and some~~ conducting onsite visits.

History: Effective May 1, 1999; amended effective April 1, 2006.

General Authority: NDCC ~~28-32-02, 15-40.1-07~~ 15.1-27-19

Law Implemented: NDCC ~~15-40.1-07~~ 15.1-27-19

67-20-01-07. Cooperative programs. School districts may develop cooperative programs with other school districts ~~to provide access to courses for as many students as possible.~~ Tuition agreements must be completed and approved by the districts involved in the cooperative summer programs. Documentation of tuition agreements must be completed and approved by the districts involved prior to the start of the summer program and must be available for review by department monitors.

History: Effective May 1, 1999; amended effective April 1, 2006.

General Authority: NDCC ~~28-32-02, 15-40.1-07~~ 15.1-27-19

Law Implemented: NDCC ~~15-40.1-07~~ 15.1-27-19

67-20-01-08. Payments. Proportionate ~~foundation aid~~ payments will be paid based on pupil membership ~~enrolled~~ in an approved course. The payment is determined by the weighting factor of the high school, the amount of credit issued, average daily membership, and the amount of funding available for the current biennium. The minimum ~~driver~~ driver's education credit payment is for one-fourth credit consisting of thirty clock-hours of classroom instruction; and twelve clock-hours of driving and observation time, which is paid proportionately if either or both parts are offered during the summer. The classroom instruction, driving, and observation must be completed by a student for the school to receive the proportional payments for a ~~driver~~ driver's education credit.

History: Effective May 1, 1999; amended effective April 1, 2006.

General Authority: NDCC ~~28-32-02, 15-40.1-07~~ 15.1-27-19

Law Implemented: NDCC ~~15-40.1-07~~ 15.1-27-19

CHAPTER 67-22-01

67-22-01-01. Corrective actions and sanctions. A school district or organization must comply with all ~~education standards from state and federal law laws.~~ If the school district or organization violates any ~~of the areas~~ law and does not take the necessary corrective actions to remedy the violation, the department will impose sanctions. Examples of noncompliance for a school district and organization include:

1. Failure to meet ~~school state school~~ approval ~~standards requirements~~ as set out in North Dakota Century Code sections ~~15-41-24, 15-41-25, 15.1-06-04, and 15.1-06-06, 15.1-06-09, 15.1-18-02, 15.1-18-03, and 15.1-21-02.~~
2. ~~Failure to meet state school accreditation standards as set out in North Dakota Century Code section 15.1-02-11.~~
3. Nonpayment of tuition as set out in North Dakota Century Code sections ~~15-40-2-04 15.1-29-05 and 15-40-2-05 15.1-29-13~~ and subsection 5 of North Dakota Century Code section ~~15-40-2-08 15.1-29-14.~~
4. ~~3.~~ Failure to file reports as set out in subsections 4 and 5 of North Dakota Century Code section ~~15-40-1-06.~~ Charging school fees contrary to law.
5. ~~4.~~ Failure to comply with federal ~~and general~~ program requirements, applicable grant award requirements whether by inference or reference to education, federal statutes in relation to education, or regulations or assurances required for education.

History: Effective February 1, 2000; amended effective April 1, 2006.

General Authority: NDCC ~~15-34.1-03, 15-59-05, 15.1-02-11, 15.1-32-09~~

Law Implemented: NDCC ~~15-34.1-03, 15-59-05, 15.1-02-11, 15.1-06-01, 15.1-32-09;~~ 20 USC 1400 et seq.

67-22-01-02. ~~Preliminary corrective~~ Corrective actions and sanctions procedures. When a school district or organization violates one or more provisions ~~applicable to education listed in section 67-22-01-01~~ of law, the following procedures must be implemented:

1. The department shall notify the local board of education under ~~North Dakota Century Code section 15-29-08,~~ or other governing board, in writing by certified mail of the violation, with a copy to the ~~school~~ district superintendent or organization administrator. The notification must include:
 - a. A description of the violation;
 - b. Corrective actions ~~required~~ by the school or organization required to correct the violation; and

- C. Timelines for completing the corrective actions^{1,2}.
2. ~~If a plan for resolution is not agreed to~~ the corrective action specified in the notice is not completed within the time period specified in the notice, or within thirty days of the notification date if no time period is specified in the notice, the superintendent of public instruction, the department director of fiscal management, and the department director of school finance and organization must be notified^{1,2}.
 3. ~~Department staff shall further communicate with the local board of education or other governing board and school district or organization administration via telephone, letter, or personal meeting to resolve the issues; and~~
 4. If issues are still not resolved and the school district or organization does not complete the required corrective actions in a timely manner, appropriate sanctions must be imposed until the school district or organization completes the corrective actions. The department shall request publication of a notice that the school district or organization has failed to complete required corrective actions in a timely manner in the official county newspaper of the county in which the school is located. The notice must comply with laws governing the disclosure of student information.

This section does not apply to a school's failure to file reports as required by North Dakota Century Code section 15.1-02-13 or 15.1-27-02.

History: Effective February 1, 2000; amended effective April 1, 2006.

General Authority: NDCC ~~15-34-1-03, 15-59-05,~~ 15.1-02-11, 15.1-32-09

Law Implemented: NDCC ~~15-34-1-03, 15-59-05,~~ 15.1-02-11, 15.1-32-09; 20 USC 1400 et seq.

67-22-01-03. Reconsideration of corrective actions and sanctions.

~~The school district or organization may request reconsideration of the violation claim if reconsideration is allowed only by statute or rules. The reconsideration process includes the following steps~~ A school district or organization may request reconsideration of a corrective action or sanction. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within three weeks of notification of the corrective action or sanction. Late requests will not be considered. The reconsideration request must state the following:

1. ~~The request for reconsideration must be made in writing to the superintendent within thirty days of the date of the department's notice of noncompliance.~~ The facts, law, or rule the school district or organization believes was erroneously interpreted or applied; and
2. ~~Sanctions specified in the department's original notice must be effective as identified in the notice.~~ The school district's or organization's

arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

- ~~3. Upon receipt of the reconsideration, the superintendent shall consider the extent that the sanctions specified in the original notice to the school district and organization will be adjusted, if any.~~
- ~~4. Reconsideration of an accreditation issue must be made by May first and must be forwarded to the state accreditation committee.~~
- ~~5. The committee must forward its recommendation regarding reconsideration to the superintendent by June fifteenth.~~
- ~~6. Any final decision must be issued by the superintendent within fifteen days of the request for reconsideration.~~
- ~~7. If the final decision involves the issue of accreditation, the final decision must be issued by June thirtieth.~~

The superintendent shall issue a final written response on the reconsideration request within three weeks after receiving a reconsideration request. The procedures of this section do not apply to corrective actions and sanctions imposed by the department pursuant to a state complaint investigation under part B of the Individuals With Disabilities Education Act [Pub.L. 108-446].

History: Effective February 1, 2000; amended effective April 1, 2006.

General Authority: NDCC ~~15-34.1-03, 15-59-05, 15.1-02-11, 15.1-32-09~~

Law Implemented: NDCC ~~15-34.1-03, 15-59-05, 15.1-02-11, 15.1-32-09~~; 20 USC 1221e-3; 20 USC 1400 et seq.

CHAPTER 67-24-01

67-24-01-01. Eligibility for summer school payments. A school district must apply for and receive approval from the department superintendent of public instruction for a summer remedial elementary summer school program ~~to be eligible to receive proportionate payments for that program.~~ To be considered by the superintendent, an application must be received no later than June first or before the start of the program, whichever is earlier.

History: Effective February 1, 2000; amended effective November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

67-24-01-02. Applications Application. Application for a summer remedial elementary summer school program must be made on form SFN 52031, which is available from on the department of public instruction instruction's web site. ~~The application must include the name of the school; county; district number; the name of the person responsible for the summer program; telephone number; opening and closing dates of the summer program; schedule of courses; teachers' names, social security numbers, majors, minors, teaching certificate numbers with expiration dates, assignments, and schedules; and the school district superintendent's signature.~~

History: Effective February 1, 2000; amended effective November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

67-24-01-03. Courses. The delivery of the courses in the summer school program must be developmentally appropriate instruction in remedial reading and remedial mathematics, which enables students to achieve challenging academic standards. All courses in the summer remedial elementary school program must meet the following criteria:

1. Each course must be part of the elementary curriculum as adopted by the school board and must be offered and available to all eligible elementary students.
2. Each course must be selected from approved courses listed in the ~~department's manual of~~ department of public instruction's kindergarten through grade 12 twelve course codes and descriptions available on the department's web site.

3. Teachers must be ~~qualified~~ licensed to teach or approved to teach in accordance with North Dakota Century Code section ~~15.1-18-02 or 15.1-18-03~~ 15.1-06-06.

History: Effective February 1, 2000; amended effective November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC ~~15.1-18-02, 15.1-18-03~~ 15.1-06-06, 15.1-27-19

67-24-01-04. Scheduling. Summer remedial elementary school programs must be conducted between the closing date of the regular school year and the beginning date of the next regular school term year. ~~Students~~ Eligible students must be enrolled ~~for sixty hours in either mathematics or reading or a minimum of thirty hours in mathematics and thirty hours in reading if a student takes both mathematics and reading.~~:

1. For a minimum of sixty hours in mathematics;
2. For a minimum of sixty hours in reading; or
3. For a minimum of thirty hours in mathematics and thirty hours in reading.

History: Effective February 1, 2000; amended effective November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

67-24-01-05. Students. Students must be in grade one through grade eight based upon the grade they will be in the fall for the district to qualify for proportionate payments. ~~Students~~ Eligible students to be served must score below the sixtieth percentile ~~on a standardized or teacher-developed test or have a grade C or below in the previous school term, or both.~~:

1. Below the sixtieth percentile on a standardized test;
2. Below the sixtieth percentile on a teacher-developed test; or
3. Have a grade of C or below in the school year that just ended.

No more than fifteen students may be served by one licensed teacher.

History: Effective February 1, 2000; amended effective November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-06(6), 15.1-27-19

67-24-01-06. Monitoring. The department of public instruction ~~will~~ may monitor the summer programs by ~~reviewing documentation and~~ conducting onsite visits ~~or other appropriate activities.~~

History: Effective February 1, 2000; amended effective November 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

67-24-01-07. Cooperative programs. School districts may develop cooperative programs with other school districts ~~to provide access to courses for as many students as possible.~~ ~~Tuition agreements must be completed and approved by the districts involved in the cooperative summer programs.~~ Documentation of tuition agreements must be completed and approved by the districts involved prior to the start of the summer program and must be available for review by department monitors.

History: Effective February 1, 2000; amended effective April 1, 2006.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

TITLE 67.1

EDUCATION STANDARDS AND PRACTICES BOARD

APRIL 2006

CHAPTER 67.1-01-01

67.1-01-01-01. Organization of the education standards and practices board.

1. **History.** The autonomous education standards and practices board was established by legislation in 1993. The board came into existence effective January 1, 1995, and assumed its duties on July 1, 1995. The board has its origins in the teacher professional practices commission which served in an advisory capacity to the superintendent of public instruction for teacher certification, teacher preparation program approval, and professional development.
2. **Board organization.** The education standards and practices board consists of ten members appointed by the governor. The board membership includes four classroom teachers from public schools, one classroom teacher from a private school, two school board members, two school administrators, and one dean of a college of education. The superintendent of public instruction or designee serves as an ex officio, nonvoting member. The administrator's professional practices board is a subset of the education standards and practices board which includes the two school administrator members, two school board members, and two teacher members selected by the full board. The term of office of the board members is three years, commencing on July first of the year of their appointment. Members may serve only two consecutive terms.
 - a. **Officers.** The officers are a chairperson, vice chairperson, and secretary, who will be the board executive director. The officers will be elected for one-year terms at the reorganization meeting, which will be the first meeting called following July first of each year.
 - (1) The duties of the chairperson include:
 - (a) Recognize members, state motions, and confine debate to the motion under discussion;

- (b) Call for special meetings upon the request of a majority of the board in writing;
 - (c) Assist the director in preparing an agenda to be sent with the announcement of the next meeting;
 - (d) Designate board members to attend special meetings at board expense;
 - (e) Appoint standing committees and subcommittees;
 - (f) Be responsible for communicating all statements on the actions of the board in the execution of its duties; and
 - (g) Perform other duties as deemed necessary by the board.
- (2) The duties of the vice chairperson include:
- (a) Preside when the chairperson is absent or when called to the chair by the chairperson;
 - (b) Perform the duties of the chairperson until a new chairperson is elected in case of a vacancy in the office of the chairperson;
 - (c) Be acquainted with the duties and responsibilities of the chairperson; and
 - (d) Perform other duties as deemed necessary by the board.
- (3) The duties of the executive director include:
- (a) Record attendance of the board members;
 - (b) Keep an accurate record of all proceedings and distribute them to the members;
 - (c) Assist the chairperson in the preparation and distribution of the agenda;
 - (d) Notify all board members ten days in advance of any meeting;
 - (e) Send out all mailings and notices required by the board;
 - (f) Prepare a financial statement for each regular meeting and coordinate vouchers;

- (g) Release statements to the media, subject to board approval; and
 - (h) In the absence of the chairperson and the vice chairperson, call the meeting to order and preside while a temporary chairperson is elected.
- b. Board members. Board members will have regular and functional attendance at all regular meetings. The chairperson will recommend to the governor that board members missing three consecutive meetings be replaced. Board members will send any materials for inclusion in mailings to the chairperson and director. Members will prepare input for each regular meeting. They will file a written report with the director after attending any subcommittee meetings.
- 3. **Meetings.** The education standards and practices board shall hold a minimum of four meetings annually. The year, for purposes of the board, begins July first and ends the last day of June during the ensuing calendar year. The meetings shall be scheduled by the membership at large, or at the call of the chairperson, or may be held upon the request in writing by a majority of the board members. The meetings may be held only after ten days' prior notice. A majority of the members constitutes a quorum that will have the authority to act upon any items of business properly placed before the board. Members should notify the secretary if unable to attend. Meetings will be conducted according to Robert's rules of order.
- 4. **Board compensation.** Each member of the board is entitled to receive compensation in the amount of sixty-two dollars and fifty cents per day and to reimbursement for expenses as provided by law for other state officers while attending meetings or performing duties directed by the board. A member of the board may not lose the member's regular salary and may not be required to refuse the compensation to which the member is entitled under this section for serving on the board.
- 5. **Contact information.** Licensure application packets and additional information about the rules of licensure of the education standards and practices board may be obtained by writing or calling:

Education Standards and Practices Board
~~600 East Boulevard Avenue, Dept. 202~~ 2718 Gateway Avenue,
Suite 303
Bismarck, ND ~~58505-0080~~ 58503
Telephone: ~~701-328-2264~~ 701-328-9641
Fax: ~~701-328-2815~~ 701-328-9647

Requests for initial application packets should be made in writing and accompanied by the thirty dollar initial application packet fee.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 28-32-02

Law Implemented: NDCC 15.1-13-02, 15.1-13-03, 15.1-13-04, 15.1-13-05, 15.1-13-06, 15.1-13-07, 15.1-13-29, 28-32-02

67.1-01-01-02. Duties of the education standards and practices board.

1. **Standards for professional ethics, performance, and practices.** The board continuously reviews the North Dakota educator's code of ethics and rules, standards, and procedures pertaining to licensure, teacher education program approval, and professional development of educators. As part of the education standards and practices board, the board will solicit input from the teaching profession and representatives of school administrators, school board members, teacher educator professors, and other interested citizens. The board will be responsible for the interpretation of the North Dakota educator's code of ethics with requests for interpretation being placed in writing.
2. **Consideration of written complaints relative to code violations.** Requests for an inquiry against any North Dakota licensed educator from any interested citizen will be heard by the board. The inquiry must be requested in writing. Any educator named in an inquiry will be notified and will be informed of the procedures that will be taken.
3. **Board-initiated complaints.** The education standards and practices board may initiate proceedings against any North Dakota licensed educator for cause as stated in North Dakota Century Code sections 15.1-13-25 and 15.1-13-26 or for violations of the educator's code of ethics.
4. **Complaint process.** A complaint by a citizen against a teacher or administrator is made by submitting a request for inquiry form to the office of the education standards and practices board.
 - a. A patron, a professional, or a district representative may obtain the request for inquiry forms and procedural guidelines from the office of the education standards and practices board.
 - b. The formal complaint process will begin when the requesting party returns the completed request for inquiry form to the secretary of the education standards and practices board. The form must be signed by the complainant. ~~All supporting~~ Supporting documentation must be included at the time the request for inquiry is submitted.

- c. The education standards and practices board secretary, upon receipt of the request for inquiry form, shall transmit a copy with the supporting documentation to the affected educator by certified mail.
- d. The affected educator may submit a clear and concise answer to the complaint within twenty working days from the day the certified mail is delivered. The answer must be sent to the secretary of the education standards and practices board and may include supporting documentation. If the affected educator fails to file an answer, the allegations in the complaint will be deemed admitted and the board shall proceed to a hearing pursuant to North Dakota Century Code sections 15.1-13-24 and 15.1-13-25.
- e. Upon receipt of the response from the affected educator, or passage of the deadline for a response, the education standards and practices board secretary will place the request for inquiry on the agenda of the next meeting of the education standards and practices board or administrator's professional practices board for preliminary discussion.
- f. At the education standards and practices board meeting, the education standards and practices board or administrator's professional practices board will review the written documents presented. No testimony will be heard at this time. Based upon the paper review, the board will determine the following:
 - (1) To dismiss the case.
 - (2) To seek additional information.
 - (3) To issue a warning or reprimand, or both.
 - (4) To initiate formal disciplinary action.
- g. If the application for licensure is denied, or if the board determines to initiate formal disciplinary action that may result in suspension, revocation, or other appropriate disciplinary action, the applicant may request, in writing, a hearing. The hearing will be conducted according to the Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32. Parties may be represented and provide testimony at the administrative hearing.
- h. Denial and revocation of an educator's professional license for convictions of crimes against children or sexual offenses:
 - (1) Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching license and the education standards and practices board

or administrator's professional practices board shall revoke immediately the teaching license of an individual who has been found guilty of a crime against a child or a sexual offense.

- (2) An individual who is denied an educator's professional license or who has had a license revoked under this section may file a request with the education standards and practices board office for a due process hearing in accordance with this section and the Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32.
- (3) The education standards and practices board may impose a fee against a licenseholder to reimburse the education standards and practices board for all or part of the costs of the administrative actions that result in disciplinary action against the licenseholder under this subdivision.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-08, 15.1-13-09

Law Implemented: NDCC 15.1-13-08, 15.1-13-24, 15.1-13-25, 15.1-13-26, 15.1-13-29

CHAPTER 67.1-02-01

67.1-02-01-01. Student teachers. A student teacher is one who teaches in a regular classroom situation as part of the requirements in professional preparation.

1. All college students in education must have classroom-related preprofessional experience prior to student teaching. This experience must be provided as early as possible. Formal admittance to the teacher education program includes meeting appropriate state program approval requirements.
2. The student teacher should be assigned by a college or university to a cooperating school on a full-time block. A full-time block is construed as a full day for ten consecutive weeks with exceptions documented through program approval. The student teacher must be placed in a classroom where the cooperating teacher is regularly assigned. Additional student teaching experiences shall be determined by the training institution.
3. In the event of an emergency, the student teacher may once during the student teaching semester be placed as a substitute in the student teacher's regularly assigned classroom for a period of time not to exceed two consecutive days.
4. Student teachers may be placed only in accredited schools.
5. Teaching experience cannot be used for a waiver of student teaching, except as specified in subdivision d of subsection 1 of section 67.1-02-02-02.
6. Student teachers may receive a stipend from the school where they have student taught.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; April 1, 2006.

General Authority: NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10

CHAPTER 67.1-02-02

67.1-02-02-01. Life certificates.

1. First grade and second grade professional life certificates issued prior to July 1, 1976, are valid for life. However, it is recommended that teachers show professional gain by college attendance, workshops, conferences, travel, and other professional activities.
2. A life license will be issued to those teachers who have been licensed to teach in North Dakota for a period of thirty years. The application for the life license must be accompanied by a fee as pursuant to the five-year renewal fee in section 67.1-02-02-04. The application for the thirty-year life license may be submitted six months prior to the expiration of the current license. Documentation of the thirty years of certification or licensure must be submitted with the application.

History: Effective July 1, 1995; amended effective August 1, 2002; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-12.1

67.1-02-02-02. Initial licenses.

1. Initial teacher licensure for in-state graduates or graduates of out-of-state programs requires a minimum of a bachelor's degree from a state agency-approved teacher education program. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in this section and the North Dakota standards for teacher education program approval:
 - a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.
 - b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific kindergarten through grade twelve majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of coursework specific to the major beyond the introductory level. All official transcripts from all institutions of

higher education must be submitted to the education standards and practices board.

- (1) The secondary content-specific major must include a minimum of four semester hours in special methods of teaching at the secondary level and special methods of teaching in the specific content area. Effective July 1, 2006, all initial secondary licensure applicants grades seven through twelve in the core academic areas will need to meet or exceed the cut scores for the praxis II as set by the education standards and practices board. For purposes of this section, English, reading and language arts, mathematics, science, foreign languages, music, visual arts, history, civics and government, geography, and economics are considered core academic areas. All other areas are considered non-core academic areas.
- (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas at the middle level, and twenty-four semester hours of content coursework in one of the content areas of English and language arts, social studies, science, or mathematics meeting the teacher education program approval standards, and special methods of teaching at the middle level. Study of these areas must total a minimum of ten thirty-two semester hours with, which includes at least two semester hours of special methods of teaching at the middle level and twenty ~~clock hours~~ of middle level classroom field experience. Effective July 1, 2006, all initial middle level licensure applicants grades five through eight in the core academic areas will need to meet or exceed the cut scores for the praxis II as set by the education standards and practices board.
- (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school mathematics, science, social studies, reading, and language arts. Effective July 1, 2006, all initial elementary licensure applicants grades one through six or grades one through eight restricted license will need to meet or exceed the cut scores for the praxis II elementary test ~~0044~~ 10011 and the praxis II principles of learning and teaching test ~~0522~~ 30522. For the school year 2005-06, all elementary teachers new to the professional will need to complete the praxis II elementary test 10011 and praxis II principles of learning and teaching test 30522 during the school year. Classroom teaching experience will be accepted from all other states toward the requirements of this paragraph.

- (4) Kindergarten through grade twelve preparation programs in special education, foreign language, art, music, physical education, business education, technology education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of kindergarten through grade twelve and, special methods of teaching in the specific content area, and student teaching in elementary and secondary schools, grades kindergarten through grade twelve. Effective July 1, 2006, all applicants in foreign language, art, and music will need to meet or exceed the cut scores for the praxis II tests as set by the education standards and practices board.
- (5) The early childhood major must include study of child development, birth through age eight, and include special methods of teaching at the early childhood level.
- (6) The special education major for regular licensure meeting or exceeding the teacher education program approval standards must include a second major in early childhood, elementary, middle level, or secondary education. Special education licensure will not be based upon a minor or endorsement. The applicant must apply to the department of public instruction for special education credentials.
- c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels. The professional education component, including student teaching, must be completed under the supervision of a teacher training institution approved by the education standards and practices board in North Dakota or the appropriate state, provincial, or similar jurisdictional authority for out-of-state institutions.
- d. Student teaching exception - Internship. An applicant who graduated from a state-approved teacher education program prior to January 1, 1988, which did not include a minimum of ten weeks of full-time student teaching may qualify under one of the two options under this subdivision. These options are available only if the applicant has met all other requirements for licensure of

the education standards and practices board and North Dakota Century Code sections 15.1-18-02 and 15.1-18-03, except the requirement of ten weeks of student teaching.

- (1) The applicant must document a minimum of eight full weeks of student teaching at the appropriate level in the major field of study under the supervision of a state-approved teacher education program and document five years of successful teaching within the last ten years; or
 - (2) An applicant who can document a minimum of eight weeks of successful student teaching but cannot document a minimum of five years of successful teaching experience must either complete the additional student teaching hours or may choose to complete an internship under the supervision of a state-approved college of teacher education to fulfill the additional hours.
 - (a) The internship contact hours in the classroom must consist of classroom time blocks not less than one-half day and when added to the applicant's existing student teaching hours total a minimum of ten weeks of full-time equivalent student teaching and supervised internship experience.
 - (b) The internship must occur in a regular kindergarten through grade twelve classroom setting and allow the intern to experience the full range of curriculum and classroom operations.
 - (c) The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.
- e. Teaching minors. A teaching minor may only be earned or added to a teaching major. An individual may not be licensed or change grade levels of licensure with only a teaching minor ~~unless the individual has met the requirements in section 67.1-02-03-03.3.~~

A teaching minor is defined as a minimum of sixteen semester or twenty-four quarter credit hours in a single designated academic area and the methods of teaching the content area. These sixteen semester or twenty-four quarter credit hours must be in courses for which the institution gives credit toward graduation in the major and be included in the teacher education program approval process.

2. An applicant must have a minimum overall grade point average of 2.50. The education standards and practices board will use the college-figured grade point average if all previous college coursework is

on the transcript. If the student has transferred from another institution, and the grade point average calculated by the institution granting the degree is only for those credits at that institution, the education standards and practices board will refigure the grade point average using all previous college coursework.

3. An applicant shall provide three positive recommendations that include consideration of the applicant's character, adequate educational preparation, and general fitness to teach. Two of the recommendations must be secured from the most recent employing board; or the applicant's credentialed supervisors; principal or administrators superintendent. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors a principal or administrators superintendent, the recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. All recommendations or letters of recommendation must be dated within six months of submitting the application for licensure.
4. Verification of eligibility for home state licensure may be requested.
5. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.
6. Application form.
 - a. An application fee of thirty dollars must accompany a request for an initial application form.
 - b. The original completed application form, including the original signature of the applicant, original signatures of the recommenders or original college placement file, and recommendation by the state-approved teacher education program will be considered for licensure by the education standards and practices board.
7. c. A fee of seventy dollars must accompany the application for initial licensure for in-state and out-of-state graduates. An additional fee of one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the licensure application.
 - d. The application will be kept on file at the education standards and practices board office for six months. Upon expiration of the six-month period, applicable fees will be refunded to the applicant if the license has not been issued.

- ~~8.~~ 7. All initial licenses are valid for only at least two consecutive years and will expire on the applicant's birthdate.
- ~~9.~~ 8. Fingerprinting. In addition to completing the licensure application process outlined in this section, an applicant applying for licensure in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14.
- a. An applicant graduating from a North Dakota teacher preparation program may obtain the fingerprinting materials from college officials. Previous graduates and out-of-state graduates must contact the education standards and practices board directly for the fingerprinting materials. Fingerprint screening reports from other agencies are not available to the education standards and practices board. Applicants must complete the process with cards and release forms designating the education standards and practices board as the agency to receive the report.
 - b. The applicant must have the fingerprinting done by an authorized law enforcement agency such as a sheriff's office, police department, or campus police. Both cards are to be completed with a ten-finger check. The criminal record inquiry authorization form must also be completed, including an original signature. The fingerprint cards and authorization form must be returned directly to the education standards and practices board office.
 - c. Unofficial, incomplete, altered, or damaged cards and forms will not be accepted.
 - d. The applicant is responsible for all local, state, and federal law enforcement agency fees related to the fingerprint background check.
 - e. The applicant is advised to allow a minimum of eight weeks for the fingerprint screening process. An applicant must hold a valid North Dakota license to be employed or permitted to teach in North Dakota. Individuals who have completed all requirements for the professional educator's license except final completion of the fingerprint background check may obtain a provisional license under section 67.1-02-04-04.
 - f. Fingerprint screening reports must be recent and may only be used for licensure for six months from the date the report is received by the education standards and practices board.
- ~~10.~~ 9. Reeducation for initial licensure. Applicants who hold nonteaching degrees in content areas taught in public schools may receive initial licensure by completing the professional education requirements at

a state-approved program authorized to recommend applicants for licensure in that area. This reeducation may be completed at the undergraduate or graduate level. The institution with the approved program must document that the applicant's specialty area degree is equivalent to its approved program's specialty area requirements in subdivisions b and c of subsection 1, and recommend the applicant for licensure. Applicants applying under this section must file a completed application form as other initial applicants, comply with the fingerprint background check in subsection 9, complete all tests, and pay all applicable fees.

44. 10. Preprofessional skills test. On July 1, 2002, all initial applicants for licensure will be required to submit their test scores for the PPST in reading, writing, and mathematics. Beginning July 1, 2003, all applicants for initial licensure will need to submit their test scores for the PPST in reading, writing, and mathematics which meet or exceed the state cut score. Documentation of the ETS PPST scores must be submitted with the application form.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12, 15.1-13-14

67.1-02-02-03. Distance learning instructor - Definition - Qualifications - Licensure.

1. "Distance learning instructor" means an out-of-state teacher who conducts a class that is broadcast or delivered to a location in North Dakota from outside North Dakota by any form of electronic transmission, including fiber optic cable, satellite, television, computer, telephone, or microwave.
2. Every distance learning instructor seen or heard in North Dakota must hold a valid North Dakota teaching license issued by the education standards and practices board. A distance learning instructor shall obtain such a license by providing to the education standards and practices board:
 - a. A certified copy of a current teaching license issued by the state of broadcast origin; and
 - b. Verification that the distance learning instructor meets that state's regular certification or licensure standards in the subject area taught via electronic transmission.

3. A North Dakota teaching license issued pursuant to this section only allows a distance learning instructor to teach in North Dakota via electronic transmission from outside this state. If a teacher desires to teach in North Dakota while being physically present in North Dakota, the teacher must obtain a teaching license pursuant to this section.
4. ~~A An applicant for a North Dakota teaching license issued pursuant to this section has an application fee of twenty-five dollars, a licensure fee of sixty dollars, an out-of-state review fee of one hundred seventy-five dollars and is valid for two years~~ must complete the application form, fingerprinting requirement, submission of fees, and all other requirements pursuant to section 67.1-02-02-02 for an initial two-year license.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11

67.1-02-02-04. Two-year and five-year renewals.

1. Two-year renewal license.
 - a. A two-year renewal license will be issued to applicants with less than eighteen months of successful contracted teaching in North Dakota who pay the required fee of fifty dollars and submit the same recommendations as are required by paragraph 3 of subdivision a of subsection 2. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years after the applicant's birthdate.
 - b. A two-year reentry license will be issued to an applicant reentering the profession after an absence of five years. An applicant reentering the profession must complete eight semester hours of reeducation credit during the applicant's first two years of contracted employment as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is seventy dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.
 - c. A two-year reentry license will be issued to an applicant from out of state who has had an absence from the profession of more than five years, or to an applicant who cannot submit four semester hours of credit taken during each of the past two five-year periods if employed in education out of state. Such an applicant must meet the requirements of North Dakota initial licensure as stated in section 67.1-02-02-02 and must also complete the requirements for reentry education as stated in this section and in section

67.1-02-02-09. The fee for the reentry license is seventy dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.

- d. A two-year renewal license will be issued for substitute teaching. A substitute teacher must maintain a valid teaching license using the two-year renewal cycle, but is not required to submit reeducation hours unless the person signs a contract. The fee for this two-year renewal is fifty dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.
 - e. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.
2. Five-year renewal license.
- a. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota license. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of five years on the applicant's birthdate.
 - (1) All five-year license applications must be accompanied by a fee of one hundred twenty-five dollars.
 - (2) Succeeding five-year renewals require evidence of thirty teaching days of contracted service and completion of a minimum of four semester hours of reeducation credit to avoid reverting to entry status. All reeducation credit must be documented by college transcripts.
 - (3) Three recommendations are required. Two of the recommendations must be secured from the most recent employing board; and the applicant's credentialed supervisors; principal and administrators superintendent. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from credentialed supervisors principals or administrators superintendents, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. Signatures on recommendations must be within a six-month period of the submission of the application for renewal.

- b. A renewal applicant who has completed the four semester hours of credit but has not been contracted for at least thirty days under the five-year license will revert to the two-year renewal cycle.
- c. Probationary license. An applicant who has failed to complete the four semester hours of reeducation credit, whether the application has been contracted or not, will either not be renewed, or may agree to be placed on a two-year probationary license. Eight semester hours of reeducation semester credit must be supplied as a condition of the two-year probationary license. A second probationary license will not be issued.
- d. If recommendations are not adequate to issue a five-year license, the education standards and practices board shall provide a hearing following North Dakota Century Code chapter 28-32. Following the hearing procedure, the education standards and practices board shall make a determination whether to issue a renewal to the applicant or deny relicensure.
- e. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.
- f. Once the requirements have been met for the probationary license, a two-year renewal license will be issued.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-09, 15.1-13-10, 15.1-13-11

67.1-02-02-05. Professional development for license renewal. The succeeding renewal of the five-year license requires verification of a minimum of four semester hours or six quarter hours of college or university credit, as documented by college transcripts, earned within the dates of the license, contracted teaching of a minimum of thirty days, and three recommendations as outlined in subsection 2 of section 67.1-02-02-04. Applicants not meeting these requirements will be processed as indicated under that section. Professional development coursework submitted for renewal may be either undergraduate or graduate credit and must be either in professional education or applicable to the applicant's licensed major, minor, or endorsement areas. Applicants who are working toward an added degree or endorsement may use coursework applicable to that expanded area of study for renewal.

In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-09, 15.1-13-10

67.1-02-02-09. Reentry. An applicant who has been out of teaching for a period of more than five years must earn a total of eight semester hours or twelve quarter hours of college or university credit, as documented by college transcripts, in the area in which the teacher wishes to renew licensure during the first two years of reentry contracted service. Substitute teachers are exempt from the eight semester hour requirement until the individual accepts a contracted position. The fee for the two-year reentry license is seventy dollars. Reentry applicants should also refer to information in subsection 1 of section 67.1-02-02-04, regarding two-year and five-year renewals.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-09, 15.1-13-10, 15.1-13-11

CHAPTER 67.1-02-03

67.1-02-03-01. Elementary endorsement. Reeducation of a licensed teacher for elementary schoolteaching may be accomplished by completing a state-approved elementary teacher education program of ~~twenty-six~~ thirty-two semester hours or ~~forty-quarter~~ hours, including a regular classroom student teaching experience of six quarter hours or a minimum of five consecutive weeks between kindergarten through grade six, or the clinical practice option described in section 67.1-02-04-07. The coursework must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school reading, language arts, mathematics, science, and social studies along with additional appropriate elementary education coursework.

Prior to July 1, 2006, reeducation for the elementary endorsement must be completed prior to or within two years of assignment to teach at the elementary level. Effective July 1, 2006, all elementary endorsement applicants grades one through six will need to meet or exceed the cut scores for the praxis II elementary test ~~0044~~ 10011 and the praxis II principles of learning and teaching test ~~0522~~ 30522.

A verified successful college-supervised internship with credit may be substituted for student teaching under this section. The internship option within the elementary endorsement is available only:

1. To an individual who has graduated from a state-approved teacher education program that has as part of its approved preparation a year of college-supervised internship at the elementary level; or
2. To an individual licensed by the North Dakota education standards and practices board to teach kindergarten through grade twelve in accordance with North Dakota Century Code sections 15.1-18-03 and 15.1-18-02 who has already successfully completed a minimum of five weeks of full-time student teaching at the elementary level in the individual's specialty area. The total internship contact hours in the classroom must be equivalent to a minimum of five weeks of full-time student teaching and consist of classroom time blocks not less than one-half of one day.

The internship must occur in a regular kindergarten through grade six classroom setting and allow the intern to experience the full range of curriculum and classroom operations. Individuals performing elementary endorsement internships work under the supervision of licensed teachers and must not be assigned in lieu of regularly employed teachers. Individuals completing the internship option who are doing so to meet the requirements for elementary principalship must not intern with classroom teachers they would be supervising or evaluating in their role as principal. The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

Specialty area endorsement in art, foreign language, or music for elementary teachers grades one through six. Elementary teachers with a major or major equivalency defined in section 67.1-02-03-01 in elementary education will be considered highly qualified to teach art, foreign language, or music grades one through six. Elementary teachers with a major, minor, or minor equivalency endorsement in art, foreign language, or music will be considered highly qualified in art, foreign language, or music grades one through six.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-02

67.1-02-03-02. Kindergarten endorsement. Reeducation of elementary teachers for kindergarten schoolteaching may be accomplished by presenting a minimum of ~~eight~~ twelve semester hours or ~~twelve~~ quarter hours of kindergarten coursework in ~~curriculum, methods, materials, skills, and activities~~ foundations of early childhood, kindergarten methods and materials, early language and literacy, observation, and assessment for the kindergarten child. The applicant must have a minimum of one year full-time equivalent successful teaching experience in kindergarten or grade one or student teaching of four semester hours or six quarter hours or a minimum of five consecutive weeks applicable to the endorsed area. Reeducation for the kindergarten endorsement must be completed prior to or within two years of assignment to teach at the kindergarten level.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-02

67.1-02-03-03. Secondary endorsement. Reeducation for secondary schoolteaching may be accomplished in one of the following ways:

1. By completing the minimum requirements for a degree in secondary education, including student teaching in grades seven through twelve or the clinical practice option as described in section 67.1-02-04-07, and a North Dakota-recognized content area major.

2. An individual who already has a North Dakota-recognized content area major meeting the state-approved teacher education standards may complete the secondary endorsement by presenting a minimum of twenty-two semester hours of secondary education professional courses for the endorsement in addition to the major or minor field. The applicant must have a minimum of one year successful teaching experience in grades seven through twelve or have five weeks supervised student teaching as part of the above program or the clinical practice option as described in section 67.1-02-04-07.
3. An individual who has a bachelor's degree in elementary education with a transcribed recognized content minor may complete the coursework necessary for the major in the core academic areas, secondary methods coursework, and a minimum of five weeks of student teaching in grades seven through twelve or the interim licensure clinical practice option under section 67.1-02-04-07.
4. An individual who has a bachelor's degree in elementary education with a transcribed recognized core content minor may complete the praxis II test and a minimum of five weeks of student teaching in grades seven through twelve or the interim licensure clinical practice under section 67.1-02-04-07.

Reeducation for the secondary endorsement must be completed prior to assignment to teach in the secondary content area. An official transcript documenting the major must be attached to the endorsement form. Effective July 1, 2006, all applicants for a secondary endorsement must complete the praxis II test in the core academic areas meeting or exceeding the cut scores set by the education standards and practices board.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-03

67.1-02-03-04. Middle school pedagogical endorsement for grades five through eight. The middle school pedagogical endorsement is mandatory for teachers licensed for grades seven through twelve to qualify for work with grades five and six in the subject fields of their licensure and voluntary for work with students in grades seven and eight. Elementary teachers licensed to teach grades one through six must complete the middle school pedagogical endorsement to teach in grades seven and eight. Endorsement for teaching in middle school is available on a voluntary basis to teachers licensed to teach elementary grades one through eight or to specialty areas licensed to teach grades one through

twelve under paragraph 1, 3, or 4 of subdivision b of subsection 1 of section 67.1-02-02-02. A review of past coursework will be conducted and a program of studies needed for completion will be established. The middle school pedagogical endorsement requires a minimum of ten semester hours, including all of the following:

1. Development of young adolescents.
2. Philosophy and curriculum (foundations) of middle school education.
3. Teaching reading and other study or learning skills in the content areas.
4. Methods or strategies of teaching in the middle grades, two semester hours minimum.
5. Reeducation for the middle level endorsement must include a twenty clock-hour field experience in grades five through eight in a school setting where middle level philosophy has been implemented, or successful teaching in grades five through eight in a school setting where middle level philosophy has been implemented.

Reeducation for the middle school endorsement must be completed prior to or within two years of assignment to teach at the middle level, grades five through eight.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-02

67.1-02-03-06. Minor equivalency endorsement.

1. Nothing in this section may be interpreted to affect the validity of minor equivalencies issued by the department of public instruction prior to September 1, 1998.
2. The applicant wishing to apply under the minor equivalency endorsement option must be licensed by the education standards and practices board to teach under North Dakota Century Code section 15.1-18-02 or 15.1-18-03. The minor equivalency endorsement will be issued for the same grade levels as the individual's primary licensure, the same as for minors transcribed by colleges of teacher education. Those whose primary licensure is secondary may use the endorsement to teach the new content area in grades seven through twelve. Those

whose primary licensure is elementary (grades one through six or one through eight) or middle school (grades five through eight) may use the endorsement for additional content expertise at those levels but may not use it to teach at the high school level without a complete secondary endorsement. The minor equivalency endorsement in core academic areas will no longer be available at the secondary level (grades nine through twelve) effective July 1, 2006.

3. The applicant must request a minor equivalency endorsement form from the education standards and practices board, complete it, and return it to the education standards and practices board with official transcripts and the review fee of seventy-five dollars.
4. Once the transcripts have been reviewed, if all requirements have been met, the minor equivalency endorsement will be added to the teaching license. A new teaching license will be issued.
5. If the requirements have not been met, the education standards and practices board will return the minor equivalency endorsement form listing the additional requirements to be completed. No additional fee will be charged when the requirements have been met and the minor equivalency endorsement is added to the teaching license.
6. Two levels of content area endorsements are available to be added to the existing North Dakota professional educator's license. A listing of all the minor equivalency endorsement content areas available and specific areas of study required within each equivalency can be obtained by contacting the office of the education standards and practices board.
 - a. The ME16 level requires a minimum of sixteen semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices board. The ME16 level will be reviewed when the applicant applies for renewal licensure. The coursework for the ME24 level must be completed within five years of the application date for the ME16 level. If the ME24 level coursework is not completed within five years, the ME16 level will be removed from the license. The minor equivalency endorsement (ME16) in core academic areas will no longer be available at the middle level (grades seven through eight) effective July 1, 2006.
 - b. After July 1, 2006, minor equivalency 16 (ME16) at the middle level (grades seven and eight) in the core academic areas must be accompanied by the praxis II content test meeting or exceeding the cut score set by the education standards and practices board.
 - c. The ME24 level requires a minimum of twenty-four semester hours of content-specific coursework, including the areas of study

approved and required by the education standards and practices board. The ME24 level also must include the special methods of teaching in the content area. The ME24 level is considered equivalent to a full teaching minor.

7. All coursework for the minor equivalency endorsement must be beyond the introductory level general studies courses as defined in section 67.1-02-02-02 and be transcribed by an approved teacher education program.
8. All coursework must be transcribed by a state-approved college of teacher education program.
9. The minor equivalency endorsement must be completed prior to contracted teaching in the content area.
10. Effective July 1, 2006, minor equivalencies will continue to be available in the noncore academic areas. If a teacher chooses to complete a minor equivalency in the core academic areas, the teacher will need to complete the praxis II content-based test in addition to the minor equivalency.

History: Effective March 1, 2000; amended effective August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-18-03

67.1-02-03-07. Major equivalency endorsements.

1. **High, objective, uniform state standard of evaluation.** College transcribed majors, the major equivalency licensure options described in this section, and alternative licenses issued in compliance with chapter 67.1-02-04 will be aligned with the North Dakota standards for program approval in section 67.1-02-01-05 as the state of North Dakota criterion-based measure of assurance that all teachers are highly qualified.
2. **Core academic areas.** For purposes of this section, English, reading and language arts, mathematics, science, foreign languages, music, visual arts, history, civics and government, geography, and economics are considered core academic areas. All other areas are considered noncore academic areas.
3. **Major equivalency endorsement.** A major equivalency endorsement is a licensure option in which an individual already licensed to teach in North Dakota may add qualifications to the license by demonstrating the individual has competency equivalent to the North Dakota program approval standards and other licensure requirements in section 67.1-02-02-02 for the new area.

- a. The minimum number of semester hours or equivalent competency documentation for a major equivalency is thirty-two semester hours, with the exception of composite majors, which require forty-two semester hours. Competency equivalent to a major in early childhood education, elementary education, middle level education, or secondary education academic majors must include evidence of appropriate:
- (1) Content area preparation;
 - (2) Teaching methods and strategies; and
 - (3) Applied experience at the appropriate grade levels, i.e., field experience, clinical practice, or student teaching.

Endorsements issued by the education standards and practices board may be used toward demonstration of competency.

- b. North Dakota-licensed individuals who wish to add a major equivalency to an existing professional educators' license may demonstrate the new content area competency through the following options approved by the education standards and practices board:
- (1) Undergraduate or graduate, or both, coursework equivalent to a major and aligned with the North Dakota program approval standards;
 - (2) An advanced degree in the major area which by itself, or in combination with other coursework, meets or exceeds the requirements for preparation in the major at the undergraduate level;
 - (3) Until July 1, 2006, a minor or minor equivalency in the area with successful completion of a portfolio which may include, but not consist entirely of, evidence of successful teaching experience in the area and a one hundred dollar review fee;
 - (4) A minor or minor equivalency in the area with successful completion of a content test meeting or exceeding the minimum scores determined by the education standards and practices board;
 - (5) Until July 1, 2006, existing North Dakota licensure in the area with a minimum of three years of successful teaching experience in the area, and successful completion of a portfolio documenting competency;

- (6) Existing North Dakota licensure in the area with a minimum of one year of successful teaching experience in the area, and successful completion of a content-based competency test approved by the education standards and practices board; or
 - (7) National board for professional teaching standards certification in the major area.
4. **Major equivalency endorsement - Requirements.** To be considered for a major equivalency, individuals teaching in the areas of early childhood education, elementary education, middle level education, and secondary education academic areas must be licensed in accordance with the laws and administrative rules of the education standards and practices board and must meet the provisions in North Dakota Century Code chapter 15.1-18, which include holding a major or major equivalency in the core content areas in which they are teaching, and a major, major equivalency, minor, or minor equivalency in noncore areas in which they are teaching.
- a. Major equivalency endorsement for elementary teachers grades one through six. Beginning July 1, 2006, all elementary teachers new to the profession and all early childhood education teachers whose licensure will include grades one through three must pass a content-based test and teaching skills test in elementary education approved by the education standards and practices board. Elementary teachers already licensed in North Dakota prior to July 1, 2006, are considered highly qualified on the basis of holding a major or endorsement in elementary education or a major in early childhood education which qualifies to teach grades one through three.
 - b. Major equivalency endorsement for middle level teachers grades five through eight. Individuals teaching in a middle school must meet the education standards and practices board grade level requirements in section 67.1-02-03-04, and hold a minimum equivalent of sixteen semester hours of content area preparation and methods in the subject area specializations in which they are teaching. New middle school teachers must, beginning July 1, 2006, hold a minimum equivalent of twenty-four semester hours of content area preparation and methods in the subject area specializations in which they are teaching or may demonstrate major equivalency in subject areas through options allowed in subdivision b of subsection 3.

The semester hours of content area preparation and methods of this subdivision for the subject area specialization must include the following specific semester hour preparation as listed in the following subject areas:

- (1) English and language arts.
 - (a) Coursework in speech or debate; and
 - (b) Six semester hours in reading;
 - (2) Mathematics. Coursework in college algebra;
 - (3) Science.
 - (a) Life science. Six semester hours in life science or biology; and
 - (b) Earth science. Six semester hours in earth science or geology; and
 - (4) Social studies.
 - (a) Geography. Six semester hours in geography; and
 - (b) History. Six semester hours in history, including North Dakota studies.
- c. Major equivalency endorsement for secondary teachers grades seven through twelve. To be considered highly qualified, secondary teachers must hold a major or major equivalency in the core content areas in which they are teaching, and a major, major equivalency, minor, or minor equivalency in noncore areas in which they are teaching.
- d. Major equivalency endorsement for teachers in science grades seven through twelve. Secondary teachers with majors in biology, chemistry, earth science, or physics (minimum of thirty-two semester hours) or physical science and other composite science degrees (minimum of forty-two semester hours) will be licensed to teach in each specific science discipline in which the individual has the minimum preparation for that specific science discipline aligned with the North Dakota standards for the areas (twelve semester hours).
- e. Major equivalency endorsement for teachers in social studies grades seven through twelve. Secondary teachers with majors in history (thirty-two semester hours), geography (thirty-two semester hours), civics and government (thirty-two semester hours), economics (thirty-two semester hours), or composite social studies (forty-two semester hours) will be licensed to teach in each specific social studies discipline in which the individual has a minimum number of semester hours aligned with the North Dakota standards for the area: history (eighteen semester hours),

geography (twelve semester hours), civics and government (twelve semester hours), and economics (twelve semester hours), or a minimum of six semester hours aligned with the North Dakota standards for any other specific social studies disciplines.

- f. Major equivalency endorsement for English and language arts teachers grades seven through twelve. Secondary teachers with majors in English and language arts (thirty-two semester hours) will be licensed to teach in additional areas of speech, journalism, or drama and theater arts if the individual has a minimum preparation of six semester hours aligned with the North Dakota standards for that specialization. Individuals who hold majors, major equivalencies, minors, or minor equivalencies in speech, journalism, or drama and theater arts will also be licensed to teach those specializations.
 - g. Major equivalency endorsement for music teachers grades seven through twelve. Teachers with majors in the field of music (minimum of thirty-two semester hours) will be licensed to teach at grade levels consistent with their preparation as stated in the rules for initial licensure in section 67.1-02-02-02 and in specializations of instrumental or choral music in which they have a minimum of eight semester hours aligned with the North Dakota program approval standards for that specialization. The eight semester hours may not include hours in private or group lessons or participation in music ensembles.
5. Special education licensure. To be considered highly qualified in special education, the teacher will need to hold an early childhood, elementary, middle level, or secondary license at the specific level the teacher is teaching, hold a bachelor's degree, demonstrate knowledge in the subject the teacher is teaching, and hold the special education credential pursuant to the special education category the teacher is serving. Special education teachers not holding regular licensure at the level they are teaching will only be able to provide consultative services to students in grades kindergarten through grade twelve in credentialed areas pursuant to section 67.1-02-05-04.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espbfom, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 2004; amended effective April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-03-09. Early childhood education endorsement. The birth to grade three early childhood education endorsement may be completed by an applicant with a nonteaching degree in a related field or holding a valid

North Dakota educator's professional license. The applicant must complete all requirements for initial licensure in section 67.1-02-02-02, submit a program of study from a state-approved teacher education program including thirty-two semester hours in early childhood education, twenty-two semester hours of professional education, and field experience or student teaching of ten weeks in grades kindergarten through grade three. If the applicant has completed a previous student teaching experience of ten weeks, the reeducation early childhood student teaching experience may be five weeks.

The early childhood education coursework must include six semester hours of child development and learning; three semester hours of building family and community relations; four semester hours of observation, documentation, and assessment; sixteen semester hours of teaching and learning, including methods of mathematics, science, social studies, reading, language arts, working with diverse learners, or play; and three semester hours of professionalism.

Effective July 1, 2006, all early childhood endorsement applicants will need to meet or exceed the cut scores for the praxis II early childhood education test and the praxis II principles of learning and teaching test.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return it to the board office with the official transcripts, and the review fee of seventy-five dollars.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-03-10. Rural flexibility endorsement.

1. The applicant wishing to apply for the rural flexibility endorsement must:
 - a. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
 - b. Be highly qualified in one of the core content areas;
 - c. Hold a minimum of a minor or minor equivalency in the course area or field being taught;
 - d. Provide a letter requesting the rural flexibility endorsement from an administrator in a district with six hundred or fewer students located in a United States Johnson locale code rural designation of seven or eight; and
 - e. Complete the rural flexibility endorsement plan form and submit with the seventy-five dollar fee to the education standards and

practices board, 2718 gateway avenue, suite 303, Bismarck, ND 58503-0585.

2. The applicant will:
 - a. Be provided by the school during the first year intense supervision or structured mentoring to become highly qualified in the additional subjects;
 - b. Have until August 1, 2007, to complete all requirements which includes all content preparation, pedagogy, and field experiences to become highly qualified in all areas of instruction; and
 - c. Have until August 1, 2008, to complete the requirements if the applicant is a special education instructor. All requirements includes all content preparation, pedagogy, and field experiences necessary to become highly qualified in all areas of instruction.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-03-11. Teaching alternative flexibility endorsement.

1. The applicant wishing to apply for the teaching alternative flexibility endorsement must:
 - a. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
 - b. Be highly qualified in a core content area;
 - c. Hold a minimum of a minor or minor equivalency in the course area or field being taught;
 - d. Be a new teacher in the content area or have not taught the content area since January 1, 2002;
 - e. Provide a letter from the school district requesting this endorsement for the applicant and documenting a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified

applicants, and whether these incentives are comparable to those offered by other schools of similar size and means;

- f. Submit a program of study to be completed within three years to become highly qualified; and
- g. Complete the teaching alternative flexibility endorsement plan form and submit with the seventy-five dollar fee to the education standards and practices board, 2718 gateway avenue, suite 303, Bismarck, ND 58503-0585.

If the applicant under this subsection is a special education teacher, the plan of study will need to be completed in two years and the teaching alternative flexibility endorsement will only be renewed once.

2. The applicant will:

- a. Be provided by the school during the first year intensive supervision or structured mentoring to become highly qualified in the additional subjects; and
- b. Have three years, or two years if the applicant is a special education teacher, to complete all requirements which includes all content preparation, pedagogy, and field experiences to become highly qualified in all areas of instruction.

The teaching alternative flexibility endorsement will be valid for one year and can be renewed twice, or once if the applicant is a special education teacher, provided the individual demonstrates successful completion of one-third, or one-half if the applicant is a special education teacher, of the total course of study prior to each renewal.

History: Effective April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

CHAPTER 67.1-02-04

67.1-02-04-01. Interim Alternative access licenses for teacher shortages. Interim Alternative access licenses will be issued under the following conditions:

1. Consideration for interim alternative access licenses will not be granted until after August first in any year.
2. Interim Alternative access licenses may be issued only in areas where documented shortages of regularly licensed teachers exist as determined by the education standards and practices board. Shortage areas must be determined by the education standards and practices board based upon the ratio of regularly licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting interim alternative access licensure. In cases where near shortages exist, the board must give additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly licensed teachers.
3. The request for an interim alternative access license must be initiated by a school. The school board or administration must make the request in writing to the education standards and practices board for consideration of an interim alternative access license, indicating intent to offer a contract if licensure can be arranged. The request must document that a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means.
4. The candidate must write a letter indicating willingness to accept the position if offered.
5. Complete official transcripts of all college work must be sent to the education standards and practices board.
6. The applicant must have proficiency and hold minimum qualifications of a content area bachelor's degree in the content area to be assigned. If an applicant already qualifies for teacher licensure in another content area, interim alternative access licensure may not be used to teach in a new content area while obtaining new content area requirements.
7. Renewal of interim alternative access licenses will be reviewed each year and will depend upon the supply of and demand for teachers as

evidenced by documented efforts to obtain a licensed person for the position.

8. Renewal of the interim alternative access license, if permitted, is contingent upon presentation of at least ~~eight semester hours or twelve quarter hours of additional college credit toward one-third~~ completion of the requirements for regular licensure as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.
9. The fee for the interim alternative access license is one hundred fifty dollars for each year the license is issued.
10. Interim Alternative access licensure is to address documented shortage areas only. Interim Alternative access licensure may not be issued to applicants who have failed to meet the deadlines or conditions of their regular licensure renewal.
11. Initial applicants for interim alternative access licensure must also submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02.
12. Upon completion of all of the requirements for regular licensure stated in section 67.1-02-02-02, an individual holding an interim alternative access license may apply for a regular two-year initial license and begin accruing the eighteen months of successful teaching time required to move into the five-year cycle according to sections 67.1-02-02-02 and 67.1-02-02-04.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-04-02. Interim licenses for substitute teachers. Interim licensure may be granted for substitute teachers who meet the initial requirements as outlined in subsections 1 through 6 and subsection 10 of section 67.1-02-04-01 when a shortage of regularly licensed substitutes exists. The interim license fee for substitute teachers is forty dollars for one year. Renewal is contingent upon continued request from the school employing the substitute. Individuals who hold an interim substitute licensure and wish to accept a full-time or part-time contract must do so under the reentry requirements in sections 67.1-02-02-04 and 67.1-02-02-09, including reeducation hours. The interim license is valid for a minimum of one year and will expire on the applicant's birthdate.

History: Effective October 16, 1998-April 14, 1999; amended effective June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11

67.1-02-04-04. Provisional Forty-day provisional licenses. Provisional licenses will be issued for a period of forty days under the following conditions:

1. Consideration for provisional licenses will not be granted until after August fifteenth in any year.
2. Provisional licenses can only be issued to those individuals who have met all of the other requirements for a license except for:
 - a. For the final clearance of the bureau of criminal investigation and the federal bureau of investigation; or
 - b. Pending the receipt of official transcripts or other original, signed, or certified documents.
3. The school wishing to hire the individual has submitted to the education standards and practices board a letter of need and intent to hire.
4. The individual has submitted a letter to the education standards and practices board indicating no criminal background and the intent to accept the position.
5. The provisional license ~~may be~~ is issued for forty days and but may be renewed ~~indefinitely~~ at the discretion of the education standards and practices board and continued request of the school.
6. There is a one-time fee for the provisional license of twenty-five dollars.
7. Once the criminal background investigation has been completed and all official transcripts or other original, signed, or certified documents received, the education standards and practices board may issue the license for which the individual is qualified with its respective fees and conditions.

History: Effective March 1, 2000; amended effective July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-13, 15.1-13-14

67.1-02-04-05. ~~Interim~~ Out-of-state reciprocal licensure. North Dakota has conditional reciprocity with other states. To receive ~~interim~~ out-of-state reciprocal licensure, an applicant must first hold a valid, current regular teaching certificate or license from another state, province, or similar jurisdiction or have completed a state-approved teacher education program.

1. ~~Interim~~ Out-of-state reciprocal entrance requirements. Those who apply to the education standards and practices board, meet the minimum reciprocity requirements, and submit a satisfactory plan for completing the remaining North Dakota requirements will be issued

a two-year interim out-of-state reciprocal license which has a fee of seventy dollars. The minimum reciprocity qualifications are:

- a. A bachelor's degree that includes a major that meets the issuing jurisdiction's requirements in elementary education, middle level education, or a content area taught in public high school;
 - b. Completion of a professional education sequence from a state-approved teacher education program, including supervised student teaching;
 - c. Fingerprint background check as required of all initial applicants; and
 - d. Submission and education standards and practices board approval of a plan to complete all remaining requirements for full North Dakota licensure as stated in section 67.1-02-02-02. That plan will include the successful completion of a praxis II content test in the core academic areas.
2. **Remaining North Dakota requirements.** An applicant will be notified of remaining requirements for full North Dakota licensure by the education standards and practices board. All out-of-state applicants shall submit transcripts for review by the same criteria as North Dakota applicants. The applicant must provide official copies of transcripts from all the institutions of higher education the applicant has attended. The nonrefundable fee for the transcript review process is one hundred seventy-five dollars.
- a. The transcript review fee may be deferred for the two-year substitute license. The fee is due upon application for the initial license and signing a North Dakota teaching contract.
 - b. The school district where the applicant will be a substitute must apply in writing for the deferment.
3. **Renewals.** The interim out-of-state reciprocal license is valid for two years and is renewable once, provided adequate progress toward completing the remaining requirements is documented and approved by the education standards and practices board. The interim reciprocal license will expire on the applicant's birthdate.

History: Effective March 1, 2000; amended effective August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14, 15.1-13-20, 15.1-13-21

67.1-02-04-07. ~~Interim licensure clinical~~ Clinical practice option.

Applicants who have entered the profession of teaching through ~~interim or emergency~~ alternative access licensure under section 67.1-02-04-01, elementary, middle, or secondary endorsement under chapter 67.1-02-03, or trade, industry, technical, and health occupations interim licensure under section 67.1-02-04-06 and are seeking to complete the requirements for regular licensure under section 67.1-02-02-02 may meet the student teaching requirement through a supervised clinical practice option meeting the following conditions:

1. The applicant requesting the clinical practice option must hold a valid regular elementary license, a valid ~~interim or emergency~~ alternative access license or a valid trade, industry, technical, and health occupations interim license and be employed under contract by an approved school during the clinical practice. The clinical practice option is not intended to be used by applicants who are not under contract and would not need release time from those contracts to complete a regular student teaching experience.
2. The clinical practice option must be approved by the education standards and practices board before it begins as part of the applicant's program of study toward regular licensure and must be conducted under the supervision of a state-approved college of teacher education. Criteria and evaluations for successful completion of the clinical experience must parallel and meet or exceed those the college of teacher education applies to student teaching experiences and the clinical practice must be at the appropriate grade levels for the licensure sought.
3. The school employing the applicant and the applicant must submit letters to the education standards and practices board requesting the clinical practice option and verifying their support of the agreement.
4. The clinical practice option must require a minimum of ten weeks of close supervision, which includes an equitable combination of daily meetings with or observations of the applicant at the beginning of the experience, by an onsite teacher meeting the qualifications for cooperating teachers under section 67.1-02-01-02 and by the school building principal or other supervisor responsible for evaluations of teachers under North Dakota Century Code sections 15.1-15-01 and 15.1-15-04 and must include onsite visits by college supervisors which meet or exceed the requirements for student teacher supervision under section 67.1-02-01-03.
5. The clinical practice option includes mentoring of the applicant for at least one school year by the onsite cooperating teacher and may also include mentoring by an offsite content area specialist. The mentoring occurs outside of the applicant's regular teaching assignment time and meets or exceeds the contact that would occur in a ten-week, full-time student teaching experience.

6. Upon completion of the clinical practice option, documentation of evaluations and transcripts verifying successful completion of the clinical practice will be provided through the college of teacher education to the education standards and practices board.
7. Applicants holding valid ~~interim or emergency~~ alternative access licensure under section 67.1-02-04-01 or trade, industry, technical, and health occupations interim licensure under section 67.1-02-04-06 who have successfully completed all of the other requirements for regular two-year initial licensure under section 67.1-02-02-02, except for ten weeks of supervised student teaching, may use the successful clinical practice meeting the conditions of this section to fulfill the student teaching requirement.

History: Effective August 1, 2002; amended effective July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10

67.1-02-04-08. Interim licensure of applicants with a bachelor's degree from a teacher education program approved by another jurisdiction Out-of-state highly qualified license.

1. ~~An applicant for an interim license under this section must submit the following:~~
 - a. ~~A completed application form.~~
 - b. ~~An application fee of twenty-five dollars.~~
 - c. ~~Official copies of transcripts from all institutions of higher education that the applicant has attended.~~
 - d. ~~A written plan to meet the requirements for initial licensure set forth in section 67.1-02-02-02.~~
 - e. ~~Two fingerprint cards and a signed criminal record inquiry authorization form in accordance with subsection 9 of section 67.1-02-02-02.~~
 - f. ~~A nonrefundable fee of one hundred seventy-five dollars for transcript review. The transcript review fee may be deferred if the applicant will be substitute teaching. The school district where the applicant will be substitute teaching must apply in writing for the deferment. A deferred transcript review fee is due upon application for an initial license or signing a North Dakota teaching contract.~~
 - g. ~~An interim license fee of seventy dollars.~~
 - h. ~~Any other information the board may require.~~

2. ~~A two-year interim license may be granted to applicants who meet the following requirements:~~
- a. ~~The applicant has earned a bachelor's degree from a teacher education program approved by another jurisdiction. The bachelor's degree must include:~~
 - (1) ~~A general studies component.~~
 - (2) ~~A major in special education, elementary education, middle level education, or a content area taught in a public high school.~~
 - (3) ~~A professional education sequence, including supervised student teaching or internship.~~
 - b. ~~The applicant has a plan, approved by the board, to meet the requirements for initial licensure set forth in section 67.1-02-02-02.~~
 - c. ~~The applicant has not engaged in conduct that is grounds for disciplinary action or denial of a license under North Dakota Century Code section 15.1-13-25 or 15.1-13-26 or North Dakota Administrative Code section 67.1-02-02-06.~~
3. ~~An interim license granted under this section may be renewed once, if adequate progress, as determined by the board, is made to complete the requirements for initial licensure set forth in section 67.1-02-02-02. North Dakota educator licensure for out-of-state applicants requires the submission of a completed application pursuant to section 67.1-02-02-02 for the North Dakota professional educator's license, the submission to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14, the completion of a bachelor's degree from a state-approved teacher education program in a North Dakota-recognized program area major, including a student teaching experience, documentation of a valid professional educator's license, submission of all fees for initial licensure pursuant to section 67.1-02-02-02, and documentation of meeting the issuing jurisdiction's requirements for the highly qualified teacher requirements of the No Child Left Behind Act of 2001 as provided by the United States department of education's monitoring process.~~

If the issuing jurisdiction has the same test code requirements of the praxis II content test, the applicant will be required to meet the North Dakota cut score.

If the out-of-state applicant has not met the highly qualified teacher requirements of the issuing jurisdiction for the No Child Left Behind Act of 2001 as documented by the United States department of education's monitoring process, that applicant will have to meet the requirements pursuant to this section through

a transcript review analysis and all requirements pursuant to subsections 1, 2, and 3 of section 67.1-02-04-05.

History: Effective July 1, 2004; amended effective April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-14, 15.1-13-25, 15.1-13-26

CHAPTER 67.1-02-05

67.1-02-05-04. Endorsements, added degrees, and restrictions. The North Dakota educator's professional license is issued as described in section 67.1-02-02-02. This license qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. Added degrees Degrees and endorsements in content areas of elementary, middle level, or secondary schools, educational pedagogy, or educational leadership must be obtained through regional or state-approved teacher education programs and meet North Dakota program approval standards for the content area.

1. **Endorsements.** An individual holding a valid North Dakota teaching license may request endorsements in kindergarten, elementary, middle school, bilingual, secondary, or content area minor equivalency endorsements or any other endorsement issued by the education standards and practices board. Specific requirements appear in chapter 67.1-02-03, regarding reeducation. A one-time, nonrefundable review fee of ~~fifty~~ seventy-five dollars must accompany the request to add an endorsement.
2. **New degrees.** A newly acquired major, minor, or new degree may be added between renewal periods by submitting official transcripts, a complete application form, including part six, completed by the college or university, and paying the regular renewal fee of ~~forty~~ forty dollars for those renewing to two-year licenses or ~~one hundred~~ one hundred dollars for those renewing to five-year licenses. An additional two-year or five-year extension, respectively, is added to the license expiration date at the time of the addition of the new major, minor, or degree.
3. **Added qualifications on life certificates.** An individual who holds a life certificate under section 67.1-02-02-01 may add degrees or endorsements to the education standards and practices board licensure records by submitting official transcripts and paying the review fee of ~~fifty~~ fifty dollars pursuant to subsection 2. An official duplicate of the life certificate showing the added degree will be issued to the life certificate holder at the time of the addition.

Official duplicate copies of lost life certificates or renewable licenses will be provided at a cost to the holder of twenty dollars.

4. **Restricted licenses.** Programs that include a specialized rather than a regular professional education core are issued licenses that restrict the holder to teaching in that specialty area. Applicants must submit the completed application form, original transcripts, fees, and fingerprint cards to the education standards and practices board prior to licensure.
 - a. Restricted licenses are issued to applicants with master's degrees in:

- (1) School psychology. The kindergarten through grade twelve school psychology restricted license will be issued to those applicants who have a master's degree in school psychology from a national association of school psychology-accredited institution.
 - (2) Speech-language pathology. The kindergarten through grade twelve speech-language pathology restricted license will be issued to those applicants who have a master's degree in speech-language pathology or communication disorders, one hundred hours of school-based practicum, and have graduated from a program accredited by the council on academic accreditation of the American speech and hearing association. Applications for renewal of the bachelor level speech-language pathology license will be denied after July 1, 2010.
- b. Restricted licenses are issued to applicants with baccalaureate degrees in the following areas who do not also meet qualifications for regular early childhood, elementary, middle level, secondary, or kindergarten through grade twelve licenses as stated in section 67.1-02-02-02:
- (1) Mental retardation education. The mental retardation kindergarten through grade twelve restricted license will be issued to those people qualifying for a valid North Dakota teaching license in special education who hold a bachelor of science degree major in mental retardation. The applicant will only provide consultative services.
 - (2) Hearing-impaired education. The hearing-impaired kindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree major in education of the deaf with thirty-two hours of hearing-impaired qualifying coursework. The applicant will only provide consultative services.
 - (3) Visually impaired education. The visually impaired kindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree with a major in visually impaired and twenty-one through twenty-three semester hours in qualifying visually impaired coursework. The applicant will only provide consultative services.
 - (4) Preschool and kindergarten handicapped. The prekindergarten handicapped restricted license will be issued to those applicants who have a baccalaureate degree in early childhood special education.

- (5) All other special education categories require regular elementary or secondary qualifications.
- (6) Career and technical education. The trade, industry, technical, and health occupations restricted license will be issued to applicants holding a baccalaureate level degree in career and technical education if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02, and is restricted to teaching in grades seven through grade twelve.
- (7) Reserve officers training corps. The reserve officers training corps license will be issued pursuant to section 67.1-02-05-03.
- (8) Native American language instruction. The Native American language restricted license will be issued to those applicants holding a baccalaureate level degree in Native American language if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02.

c. Restricted licenses are issued to those nondegreed applicants in:

- (1) Career and technical education. Restricted licenses are issued for trade, industry, technical, and health occupations in accordance with section 67.1-02-04-06 and are restricted to teaching in grades ~~seven~~ nine through twelve.
- (2) North Dakota American Indian language instructors as pursuant to North Dakota Century Code section 15.1-13-22.

d. Teachers with restricted licenses may teach or substitute teach only in the restricted specified area.

5. National board certification.

a. Definitions:

- (1) "Board" means the education standards and practices board.
- (2) "Certification" means national board certification as provided by the national board.
- (3) "National board" means the national board for professional teaching standards.

- b. Board duties. ~~The~~ Based upon receiving state dollars, the board shall:
- (1) Inform teachers of the national board certification program and the scholarships and services the national board provides to teachers seeking certification.
 - (2) Collect and review in the order received scholarship applications from individuals who are licensed to teach by the board or approved to teach by the board.
 - (3)
 - (a) Approve no more than seventeen state-funded applications per year;
 - (b) During each year of the biennium, reserve three of the available scholarships for individuals teaching at low-performing schools;
 - (c) ~~During each year of the biennium award no more than two of the remaining fourteen available scholarships to applicants employed by the same school district;~~
 - (d) Require the recipient to serve during the school year as a full-time classroom teacher in a public or nonpublic school; and
 - (e) (d) Require the recipient to participate in mentoring ~~programs and teacher evaluation programs~~ developed and implemented in the employing school or district.
 - (4) Ensure that all scholarship recipients receive adequate information regarding level of commitment required to acquire certification.
 - (5) If any individual who receives a scholarship under this section does not complete the certification process within the time allotted by the board, the individual must reimburse the state an amount equal to one-half of the amount awarded to the individual as a scholarship.
 - (6) Collect and review in the order received scholarship applications for national board recertification from individuals who are licensed to teach by the board or approved to teach by the board and:
 - (a) Approve no more than two scholarship applications per year under this subsection;

e. f. Upon documented successful completion:

- (1) The national board for professional teaching standards certification may be added between renewal periods for a fee of one hundred dollars; and
- (2) An additional ten years is also added to the license expiration date at the time of the addition of national board for professional teaching standards certification.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12.1, 15.1-13-22, 15.1-18-02, 15.1-18-03; S.L. 2001, ch. 173, § 16

TITLE 81
TAX COMMISSIONER

APRIL 2006

CHAPTER 81-04.1-01

81-04.1-01-08. ~~Monthly sales tax returns~~ Deduction for administrative expense. Compensation for sales or use tax permitholders is applied as follows:

1. A sales and use tax permitholder having taxable sales and purchases equal or exceeding three hundred thirty-three thousand three hundred thirty-three dollars for the preceding calendar year may deduct and retain one and one-half percent of the tax due, but this deduction may not exceed eighty-five dollars per month.
2. A sales and use tax permitholder that is a remote seller, or a certified service provider assigned by the qualifying permitholder, is allowed to deduct and retain up to one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement approved by the streamlined sales and use tax governing board. For purposes of this subsection, "remote seller" means a retailer that does not have adequate physical presence to establish nexus in this state for sales tax purposes.

Qualified sales or use tax permitholders, including permitholders and certified service providers who pay tax due under chapter 57-39.4, who fail to comply with the monthly requirement, fail to file the forms on time, or fail to pay the tax due for the month on time, forfeit the one and one-half percent compensation for expenses.

The filed returns filed by qualified permitholders under section 57-39.2-12 or 57-40.2-07 will be reviewed by the office of the tax commissioner each calendar year to determine if new sales or use tax permitholders qualify to file monthly returns and to determine if sales or use tax permitholders who have filed monthly returns

must revert to quarterly filing status. Changes in filing status as a result of the calendar year reviews will occur on or after July first of the following year.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-12, 57-39.2-12.1, 57-40.2-07, 57-40.2-07.1

81-04.1-01-09.1. Effect of rate changes on contracts and sales agreements. Except for contracts for the construction of highways, roads, bridges, and buildings, when an unconditional contract to sell tangible personal property is entered into prior to the effective date of a rate change, and the goods are delivered after that date, the new rates are applied to the transaction. When an unconditional contract to sell tangible personal property is entered into prior to the effective date, and the goods are delivered prior to that date, the tax rates in effect for the prior period are applied to the transaction.

When a contract to sell tangible personal property contains a specific provision to pass title prior to delivery of the goods, the rates in effect at the time title transfers are applied.

Lessors who lease tangible personal property are required to collect tax from their lessees at the rate in effect at the time the lease or rental payment is due, including payments on contracts entered into prior to a rate change.

For services covering a period starting before and ending after the effective date of a rate increase, the new rate shall apply to the first billing period starting on or after the effective date. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

History: Effective March 1, 1988; amended effective March 1, 1990; April 1, 2006.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-10, 57-39.4-30, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-09

81-04.1-01-10. Freight, delivery, and other transportation charges. Freight, delivery, and other transportation charges are considered part of the selling price. If the sale is taxable, the freight, delivery, and other transportation charges that are part of the sale and billed by the seller are taxable. If the product being delivered is exempt from sales tax, then freight, delivery, and other transportation charges are also exempt. Delivery charges billed directly to the customer by delivery services that are not making the sale of tangible personal property remain exempt from sales and use tax.

- ~~1. If the retail sale is made free on board point of origin, the title passes to the buyer at that time, and any subsequent shipment of the merchandise is a shipment made by the buyer of the buyer's own property. The retail seller, in such a situation, would not collect tax on the amount of freight paid because the buyer is shipping the buyer's own merchandise.~~

2. ~~If the retail sale is made free on board destination, the title to the merchandise passes to the buyer when the merchandise has reached the point of destination. The retail seller, in such a situation, is required to include the freight charges in the base upon which sales tax is charged.~~
3. ~~Charges paid by a retailer for transporting tangible personal property from the source of supply to the retailer's place of business are not deductible for sales tax purposes by the retailer from the price for which the retailer thereafter sells it.~~
4. ~~If the freight, delivery, or transportation charges in the contract are violated, the time and place at which title passes depend on the intent of the parties, as determined by the terms of the contract, the conduct of the parties, and usage of the trade.~~
5. ~~If the subject matter of the contract (that is, the merchandise) has not been ascertained and assigned to the contract or if something remains to be done by the seller to put the merchandise in a deliverable state, title does not pass until that occurs.~~
6. ~~Unless a contrary intent appears, delivery to the buyer will be considered prima facie evidence of an intention to pass title at the time delivery is made, and the sale occurs at that time.~~
7. ~~All the provisions and conditions listed above apply to freight, delivery, and transportation charges on rental equipment since a rental or lease is a sale under the sales tax law.~~

History: Effective June 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-40.2-01, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

81-04.1-01-11. Handling charges and finance Finance or carrying charges. ~~When tangible personal property is sold at a fixed price plus an additional service or handling charge, such charges are part of the selling price, and sales tax must be computed on the gross receipts from such sale. Finance, carrying, and interest charges are not taxable as handling charges if separately agreed upon by the buyer and the seller and if separately billed by the seller to the buyer.~~

History: Effective June 1, 1984; amended effective March 1, 1988; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-01-15. Certificate of resale. Receipts from the sale of tangible personal property for the purpose of resale by the purchaser are not subject to sales tax if the buyer furnishes a North Dakota resale certificate, the multistate

tax commission uniform sales and use tax certificate, or a certificate of exemption authorized by the streamlined sales tax agreement. A new resale certificate is not needed for each sale, but the seller must have a signed certificate of resale from all customers who buy for resale.

If a seller claims a sale as a sale for resale, and it is determined that such sale is not exempt, any tax and penalty due thereon will be collected from the buyer.

Whenever a person submits a false certificate of resale to a seller, the person submitting the false certificate is liable for any tax and penalties which attach on the sale.

History: Effective June 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-10, 57-39.4-18

81-04.1-01-19. Sale of traded-in property. When one article is traded in on another article, the sales tax applies only on the difference in value between the two articles. The secondhand article is subject to sales tax when resold.

Whenever property not subject to sales tax or to motor vehicle excise tax is taken as part consideration of the purchase price, the purchaser is required to pay sales tax on the full purchase price.

When a used mobile home is traded in for other tangible personal property, sales tax applies on the full purchase price with no deduction for the value of the trade-in.

When used farm machinery is traded in for new farm machinery or other tangible personal property, farm machinery gross receipts tax or sales tax applies on the net selling price after deduction for the value of the trade-in.

History: Effective June 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-01-25. Credit sales and bad debts. Conditional sales contracts or other forms of sales, if the payment of the principal sum is to be extended over a period longer than sixty days from the date of the sale, do not include credit sales for which the purchaser is billed in full in intervals of less than sixty consecutive days even though the credit terms may allow the purchaser to extend the principal payments beyond sixty consecutive days.

When a retailer sells or renegotiates a conditional sales contract or other form of credit for which the principal payment is to be extended over a period longer than sixty days to a third party, the retailer is required to remit the full amount of tax due on the outstanding credit balance.

Bad debts may be deducted from gross receipts when the tangible personal property is sold on credit and the following facts are fully shown:

1. That the account has not been paid and has been found to be worthless.
2. That the amount was previously included in the gross receipts and sales tax collected and remitted by the retailer.
3. That the ~~account has been charged off the retailer's books for income tax purposes~~ bad debt is written off as uncollectible in the retailer's books.

When filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the retailer, any bad debt provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received on behalf of the retailer.

~~When claiming the deduction, the permitholder must report~~ The books and records of the party claiming the bad debt must contain the customers' names, addresses, amount charged off, and the period in which the sale was included in the holder's taxable sales, and be available for review by the tax commissioner upon request.

History: Effective June 1, 1984; amended effective July 1, 1989; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-05, 57-39.2-10, 57-39.2-11, 57-39.4-21

81-04.1-01-28. Coupons. ~~When a manufacturer, processor, or wholesaler issues a coupon entitling a purchaser to credit on the item purchased, the tax is due on the total gross receipts. Retailers shall include in their taxable receipts the exchange value of coupons or redemption certificates taken from customers, if such coupons or certificates are redeemed by a wholesaler or others.~~

~~Example: If a manufacturer, processor, or wholesaler issues coupons entitling the holder to a credit allowance of fifteen cents on the purchase of its products from a retailer, the sales tax is computed by the retailer as follows:~~

Regular price		.99
Sales tax at 5 percent		.05
Subtotal		1.04
Credit for coupon		.15
Amount due from purchaser		.89

~~When a retailer issues a coupon entitling the purchaser to a discounted price on the item purchased and when the retailer receives no reimbursement from a~~

manufacturer, processor, or wholesaler, the sales tax is due from the purchaser only on the discounted price.

Example: If a retailer issues coupons entitling the holder to a credit allowance of fifteen cents on the purchase of its products from the retailer, the sales tax is computed by the retailer as follows:

Regular price		.99
Credit for coupon		.15
Subtotal		.84
Sales tax at 5 percent		.05
Amount due from purchaser		.89

Manufacturer's rebates are not cash discounts and may not be used to reduce the taxable gross receipts derived from sales of taxable products. Manufacturer's rebates subject to tax include those paid by the manufacturer directly to the purchaser of taxable goods as well as those assigned by the purchaser to the seller of the goods.

The exchange value of coupons or certificates issued by the retailer as store coupons, and not redeemable by wholesalers or others, must be treated as cash discounts not subject to sales tax.

Sales of gift certificates or other forms of credit which may be redeemed by the holder for equivalent cash value are deposits or prepayments and are not subject to tax when sold. However, the value of these certificates is taxable when redeemed if they are redeemed for taxable goods or services.

History: Effective October 1, 1986; amended effective March 1, 1988; July 1, 1989; March 1, 1990; ~~declared partially void by decision of the North Dakota Supreme Court filed June 4, 2002~~ April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01(3), 57-39.2-01(7), 57-39.2-02.1

81-04.1-01-29. Bracket system Calculation of tax. The following brackets must be used by all North Dakota retailers to calculate applicable North Dakota sales and use tax: The sales or use tax liability must be computed by multiplying the sales price of each taxable item or total purchase amount by the appropriate tax rate percentage. If the tax results in a fraction of a cent, the tax liability shall be carried to the third decimal place and rounded to the nearest whole cent. If the third decimal place is four or less, round down, and if the third decimal place is greater than four, round up.

	3%	
Amount of Sale		Tax
0.04 - 0.15		No tax

0.16	-	0.34	1¢
0.35	-	0.67	2¢
0.68	-	1.00	3¢
1.01	-	1.34	4¢
1.35	-	1.67	5¢
1.68	-	2.00	6¢

Repeat established brackets

~~3 1/2 %~~

Amount of Sale		Tax	
0.01	-	0.15	No tax
0.16	-	0.29	1¢
0.30	-	0.58	2¢
0.59	-	0.86	3¢
0.87	-	1.15	4¢
1.16	-	1.43	5¢
1.44	-	1.72	6¢
1.73	-	2.00	7¢
2.01	-	2.29	8¢

Repeat established brackets

~~4%~~

Amount of Sale		Tax	
0.01	-	0.15	No tax
0.16	-	0.25	1¢
0.26	-	0.50	2¢
0.51	-	0.75	3¢
0.76	-	1.00	4¢
1.01	-	1.25	5¢
1.26	-	1.50	6¢
1.51	-	1.75	7¢
1.76	-	2.00	8¢

Repeat established brackets

~~5%~~

Amount of Sale		Tax	
0.01	-	0.15	No tax
0.16	-	0.20	1¢
0.21	-	0.40	2¢

0.41	-	0.60	3¢
0.61	-	0.80	4¢
0.81	-	1.00	5¢
1.01	-	1.20	6¢
1.21	-	1.40	7¢
1.41	-	1.60	8¢
1.61	-	1.80	9¢
1.81	-	2.00	10¢

Repeat established brackets

5 1/2%

Amount of Sale		Tax	
0.01	-	0.15	No tax
0.16	-	0.19	1¢
0.20	-	0.37	2¢
0.38	-	0.55	3¢
0.56	-	0.73	4¢
0.74	-	0.91	5¢
0.92	-	1.10	6¢
1.11	-	1.28	7¢
1.29	-	1.46	8¢
1.47	-	1.64	9¢
1.65	-	1.82	10¢
1.83	-	2.00	11¢
2.01	-	2.19	12¢

Repeat established brackets

6%

Amount of Sale		Tax	
0.01	-	0.15	No tax
0.16	-	0.17	1¢
0.18	-	0.34	2¢
0.35	-	0.50	3¢
0.51	-	0.67	4¢
0.68	-	0.84	5¢
0.85	-	1.00	6¢
1.01	-	1.17	7¢
1.18	-	1.34	8¢

1.35 -	1.50	9¢
1.51 -	1.67	10¢
1.68 -	1.84	11¢
1.85 -	2.00	12¢

Repeat established brackets

~~6-1/2%~~

Amount of Sale		Tax
0.01 -	0.15	No tax
0.16 -	0.31	2¢
0.32 -	0.47	3¢
0.48 -	0.62	4¢
0.63 -	0.77	5¢
0.78 -	0.93	6¢
0.94 -	1.08	7¢
1.09 -	1.24	8¢
1.25 -	1.39	9¢
1.40 -	1.54	10¢
1.55 -	1.70	11¢
1.71 -	1.85	12¢
1.86 -	2.00	13¢
2.01 -	2.16	14¢
2.17 -	2.31	15¢

Repeat established brackets

~~7%~~

Amount of Sale		Tax
0.01 -	0.15	No tax
0.16 -	0.29	2¢
0.30 -	0.43	3¢
0.44 -	0.58	4¢
0.59 -	0.72	5¢
0.73 -	0.86	6¢
0.87 -	1.00	7¢
1.01 -	1.15	8¢
1.16 -	1.29	9¢
1.30 -	1.43	10¢
1.44 -	1.58	11¢

1.59 -	1.72	12¢
1.73 -	1.86	13¢
1.87 -	2.00	14¢

Repeat established brackets

7-1/2%

Amount of Sale	Tax
0.01 - 0.15	No tax
0.16 - 0.27	2¢
0.28 - 0.40	3¢
0.41 - 0.54	4¢
0.55 - 0.67	5¢
0.68 - 0.80	6¢
0.81 - 0.94	7¢
0.95 - 1.07	8¢
1.08 - 1.20	9¢
1.21 - 1.34	10¢
1.35 - 1.47	11¢
1.48 - 1.60	12¢
1.61 - 1.74	13¢
1.75 - 1.87	14¢
1.88 - 2.00	15¢
2.01 - 2.14	16¢
2.15 - 2.27	17¢

Repeat established brackets

8%

Amount of Sale	Tax
0.01 - 0.15	No tax
0.16 - 0.25	2¢
0.26 - 0.38	3¢
0.39 - 0.50	4¢
0.51 - 0.63	5¢
0.64 - 0.75	6¢
0.76 - 0.88	7¢
0.89 - 1.00	8¢
1.01 - 1.13	9¢
1.14 - 1.25	10¢

1.26	-	1.38	11¢
1.39	-	1.50	12¢
1.51	-	1.63	13¢
1.64	-	1.75	14¢
1.76	-	1.88	15¢
1.89	-	2.00	16¢

~~Repeat established brackets~~

9%

Amount of Sale			Tax
0.01	-	0.15	No tax
0.16	-	0.23	2¢
0.24	-	0.34	3¢
0.35	-	0.45	4¢
0.46	-	0.56	5¢
0.57	-	0.67	6¢
0.68	-	0.78	7¢
0.79	-	0.89	8¢
0.90	-	1.00	9¢
1.01	-	1.12	10¢
1.13	-	1.23	11¢
1.24	-	1.34	12¢
1.35	-	1.45	13¢
1.46	-	1.56	14¢
1.57	-	1.67	15¢
1.68	-	1.78	16¢
1.79	-	1.89	17¢
1.90	-	2.00	18¢

~~Repeat established brackets~~

History: Effective November 1, 1987; amended effective March 1, 1990; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-08.2, 57-39.4-25

81-04.1-01-30. Taxing separate articles. Repealed effective April 1, 2006.
~~When a retailer makes a single sale involving several separate taxable items, sales~~

~~tax is calculated on the sum of the retail prices of the goods. Retailers are prohibited from calculating tax on each separate item.~~

~~History: Effective March 1, 1988.~~

~~General Authority: NDCC 57-39.2-19, 57-40.2-13~~

~~Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-08.2~~

CHAPTER 81-04.1-03

81-04.1-03-03. Food and food products for human consumption. ~~Candy, soft drinks, breath mints, and chewing gum are not exempt from sales tax when purchased in North Dakota.~~ Food or food ingredients are exempt from sales tax. Food and food ingredients do not include alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, or tobacco, which remain subject to sales tax. For purposes of this section:

1. "Alcoholic beverage" for human consumption means beverages containing one-half of one percent or more of alcohol by volume.
2. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation as described herein, containing flour, or any item requiring refrigeration.
3. "Dietary supplement" means a product subject to tax if the product label contains a "supplemental facts" box. If the product label contains a "nutrition facts" box, the product is regarded as food, and is exempt from tax.
4. "Prepared food" is subject to sales tax and includes food sold in a heated state or heated by the seller, or food that is prepared by mixing or combining two or more food ingredients for sale as a single item, or food sold with eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws provided by the seller. Food sold in an unheated state by weight or volume as a single item is taxable only if sold with eating utensils. Generally businesses that sell prepared food include restaurants, convenience stores, delicatessens, concession stands, coffee shops, and caterers.
5. "Soft drinks" subject to sales tax include nonalcoholic beverages that contain natural or artificial sweeteners, and that do not contain milk or milk products, soy, rice, or similar milk substitutes, or that contain greater than fifty percent vegetable or fruit juice by volume. Soft drinks generally include pop and fruit drinks or fruit punches that are less than fifty percent juice by volume.
6. "Tobacco" means any cigarettes, cigars, chewing or pipe tobacco, or any other items that contain tobacco.

~~Sales of food products prepared for immediate consumption on or near the premises of the seller are subject to sales tax even though they are sold on a "take out" or "to go" order by restaurants and drive-ins and are actually packaged or wrapped and taken from the premises.~~

The exemption for food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store does not apply to food given away by restaurants or other businesses which regularly and primarily sell prepared food and beverages.

~~When a package contains food and nonfood products, if the value of the nonfood items exceeds fifty percent of the total selling price, the entire sale is subject to sales tax.~~

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; March 1, 1990; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04.1, 57-40.2-04.1

81-04.1-03-05. Sales of legal tender coins and, currency, and precious metals. Coins or currency issued as legal tender by foreign nations are exempt from sales tax. Sales of ~~gold or silver bullion, bars, ingots, or other sales of~~ precious metal ~~not issued as legal tender by the United States government or any foreign government are subject to sales tax if sales of these products takes place within North Dakota that has been refined to a purity of not less than nine hundred ninety-nine parts per one thousand and is in such form or condition that its value depends upon its precious metal content and not its form are exempt from sales tax.~~

History: Effective June 1, 1984; amended effective July 1, 1985; April 1, 2006.

General Authority: NDCC 57-39.2-10

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-03-11. Computers - Hardware and software. Computers, peripheral computer equipment, and computer ~~programs~~ software, with the exception of custom ~~programs~~ software, are subject to tax.

For purposes of administration of the sales and use tax law, unless the context otherwise requires, the following definitions apply:

1. ~~Computers and peripherals (hardware).~~ The components and accessories which constitute the physical computer assembly, including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, type readers, document sorters, optical readers and digitizers, and networks. "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
2. ~~"Computer programs (software).~~ " means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

- a. ~~Operating or executive programs include the programming system or technical language upon which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.~~
 - b. ~~Applied programs include the programming systems or technical language, including the tapes, disks, cards, or other media on which such language is recorded, designed either for application in a specialized use, or upon which a plan for the solution of a particular problem is based. Examples of applied programs include payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs. Typically, applied software programs can be transferred from one computer to another by storage media.~~
 - c. ~~Storage media includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by computer.~~
3. "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 4. "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 5. "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or the prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser of such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.
 6. Sale, lease, or rental of prewritten computer programs software. The transfer of title, possession, or use for a consideration of any prewritten

computer software which is not a custom computer program is a transfer of tangible personal property and is taxable.

- a. ~~Prewritten (canned) programs. Prewritten programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage media or by listing the program instructions. The tax applies to the sale or lease of the storage media or program listing on which or into which such prewritten programs have been recorded, coded, or punched.~~
 - (1) ~~Tax applies whether title to the storage media on which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage media furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded or punched by the customer or by the lessor on the customer's premises, is a sale or lease of tangible personal property and is taxable.~~
 - (2) Tax applies to the entire amount charged to the customer. When the consideration consists of license fees, royalty fees, or program design fees, all fees present or future, whether for a period of minimum use or for extended periods, are includable in the purchase price subject to tax.
- (3) b. The sale of a prewritten (canned) program computer software is a taxable transaction, even though the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer delivered electronically or by load and leave. Tax does not apply to the sale or lease of custom computer software regardless of the form in which the program is transferred. If the custom computer software is not separately stated from the sale or lease of equipment, it will be considered taxable as part of the sale.
- (4) c. Maintenance contracts sold in connection with the sale or lease of prewritten computer programs generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements or error corrections have been recorded. The maintenance contract also provides that the purchaser will be entitled to receive telephone or onsite consultation services software required by the seller as a condition of the sale or rental of prewritten computer software will be considered as part of the sale or rental of the prewritten computer software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for the software.

- (a) ~~If the purchase of the maintenance contract is not optional with the purchaser, then the charges for the maintenance contract are taxable, including the consultation services as part of the sale or lease of the prewritten program.~~
- (b) d. If the purchase of the maintenance contract is optional with the purchaser, but the purchaser does not have the option to purchase the consultation services separately from the ~~storage media improvements or error corrections~~ upgrades or enhancements, then the charges for consultation services are taxable as part of the sale or lease of ~~storage media~~ upgrades or enhancements. If, however, the purchaser may at his ~~the purchaser's~~ option, contract for the consultation services separately from the ~~storage media~~ upgrades or enhancements, then the charges for the consultation services are nontaxable.
- (5) ~~Computer machines, equipment, and programs purchased or leased exempt from tax on the basis of a resale exemption are subject to use tax if they are put to a taxable use at any time subsequent to the exempt purchase. The subsequent sale of tangible personal property which has been leased or rented is subject to sales or use tax.~~
- (6) e. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information, produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property, unless the information from which such reports were compiled was furnished by the same person to whom the finished report is sold in which case the original report is not subject to tax.
- (7) f. When additional copies of records, reports, manuals, and tabulations are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, when the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

If no separate charge is made for additional copies by the service bureau or data processing firm, then tax applies to that portion of the gross receipts on which the cost of the additional computer time, the cost of materials, and labor costs to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax.

- (8) g. ~~Charges Separately stated charges~~ for training services are nontaxable. ~~The service bureau or data processing firm is the consumer of tangible personal property used in training others or provided to the trainees without a separate charge for the materials as part of the training services.~~
- (a) Tax applies to charges for training materials, including books and manuals furnished to trainees for a charge separate from the charge for training services.
- (b) ~~When a person sells tangible personal property, such as computers or programs, and provides training materials to the customer without making an additional charge for the training materials, this is a sale of the training materials. The selling price of the training is considered to be included in the sales price of the tangible personal property.~~
- d. ~~"Custom program" means any computer program which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.~~
- (1) ~~Tax does not apply to the sale or lease of a custom computer program regardless of the form in which the program is transferred. The tax does not apply to the transfer of a custom program or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment.~~
- (2) ~~If the custom programming charges are not separately stated from the sale or lease of equipment they will be considered taxable as part of the sale.~~
- (3) ~~A custom computer program includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The copies, however, are taxable as prewritten computer programs.~~
4. 7. Time sharing. The sale or lease of computer time through the use of the terminal or as a result of a batch service arrangement is a nontaxable service and is not subject to tax if separately billed or charged. However, any charges for computer machines and equipment, remain subject to tax.
5. 8. Data processing service. The charge for reports compiled by a computer exclusively from data furnished by the same person for whom the data is prepared is a service and is not subject to sales or

use tax unless it is part of a unitary transaction which is subject to sales or use tax.

History: Effective March 1, 1988; amended effective April 1, 2006.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-40.2-01, 57-40.2-02.1

81-04.1-03-13. Sales to residents of Montana. Sales of tangible personal property to Montana residents are exempt from sales tax if the Montana resident is in North Dakota specifically to make a purchase and not as a tourist and signs a certificate of purchase or a certificate of exemption authorized by the streamlined sales tax agreement, the sale is in an amount of fifty dollars or more, and the goods are taken outside of North Dakota, for use entirely outside this state.

Sales of meals, onsale beverages, lodging accommodations, entertainment, and similar goods and services consumed in North Dakota are not exempt when sold to residents of Montana.

Sales and installation of goods into personal property owned by residents of Montana are not taxable provided the goods are removed from North Dakota for use exclusively outside this state. Use which is incidental to removing the goods from North Dakota does not subject the goods to North Dakota use tax.

History: Effective March 1, 1990; amended effective April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-04(12)

CHAPTER 81-04.1-04

81-04.1-04-02. Agriculture - Farm machinery and equipment - Farm machinery repair parts. Farm machinery and irrigation equipment used principally for producing agricultural crops or livestock, including leasing or renting of farm machinery and equipment, are subject to a special gross receipts tax in lieu of sales tax at a reduced rate, as provided by North Dakota Century Code chapter 57-39.5.

Machinery sold for nonagricultural purposes is subject to sales tax at the full rate. Motor vehicles required to be registered with the motor vehicle department, including vehicles such as trucks, pickups, cars, snowmobiles, all-terrain vehicles, and garden tractors, do not qualify as farm machinery. Irrigation equipment sold for nonagricultural purposes is subject to sales tax at the full rate. Tires, accessories, communication equipment, tools, shop equipment, grain bins, feed bunks, fencing material, and other farm supplies are subject to sales tax at the full rate.

Contractors installing barn cleaners, milking systems, automatic feeding systems, irrigation systems, and similar installations which become a part of real property are subject to use tax on the cost of the materials.

~~The reduced rate applies to parts~~ Parts, excluding tires, used to repair qualifying farm machinery, are exempt from the special gross receipts tax. ~~The reduced rate on farm machinery repair parts applies only when the machinery is used exclusively for agricultural purposes.~~ These same parts are subject to the general North Dakota sales and use tax rate when sold to contractors or others who do not use the machinery exclusively for agricultural purposes.

Farm repair parts include any durable goods, except tires, used to repair qualifying farm machinery. Durable goods do not include fluids, gases, oils, greases, lubricants, paints, and waxes. Farm machinery repair parts do not include items like tools, lumber, twine, fencing material, or storage tanks.

Sales of parts not clearly identified for use in farm machinery are subject to the reduced rate when used by the seller to repair farm machinery.

When parts are sold over the counter, the seller should use discretion but should generally accept in good faith the purchaser's word as to their intended use. When the purchaser intends to use the parts on a qualifying farm machine, the reduced rate applies qualifying parts are exempt from sales tax. If the parts are for nonfarm machinery use, the general sales tax rate must be charged.

~~Effective July 1, 2002, the sale of used farm machinery, farm machinery repair parts, and used irrigation equipment that previously qualified for the reduced rate will become exempt from sales tax.~~

History: Effective June 1, 1984; amended effective July 1, 1985; July 1, 1987; March 1, 1988; June 1, 2002; April 1, 2006.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-08.2, ~~57-40.2,~~ 57-39.5-01, 57-39.5-01.1, 57-39.5-02, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-12

81-04.1-04-10.1. Amusement - Coin-operated amusement devices.

Sales tax is due on eighty percent of the gross receipts collected from coin-operated amusement devices. Sales tax is included in the gross receipts from coin-operated amusement devices and must be deducted before calculating gross receipts subject to sales tax (taxable sales).

~~Taxable sales from coin-operated amusement machines are calculated as follows: taxable sales = [gross receipts divided by 105% (1.05)] multiplied by 80% (.80). Taxable sales may also be calculated in a single step as follows: taxable sales = gross receipts multiplied by 76.19% (.7619).~~

<u>1. 5% state sales tax only</u>	<u>Taxable sales = Gross Receipts x 76.92%</u> <u>(.7692)</u>
<u>2. 5% state sales tax and 1% city sales tax</u>	<u>Taxable sales = Gross Receipts x 76.34%</u> <u>(.7634)</u>
<u>3. 5% state sales tax and 1 3/4% local city sales tax</u>	<u>(State) Taxable sales = Gross Receipts x</u> <u>76.20% (.7620)</u> <u>(City) Taxable sales = Gross Receipts x</u> <u>53.34% (.5334)</u>

In the absence of a written agreement stipulating division of gross receipts between the coin-operated amusement device owner and the location operator, the coin-operated amusement device owner is responsible for sales tax on eighty percent of the gross receipts.

The purchaser of a coin-operated amusement device is liable for sales tax on a coin-operated amusement device purchased in this state or for use tax on a coin-operated amusement device purchased outside of this state regardless of whether a license fee is paid to any governmental authority for operating the coin-operated amusement device.

History: Effective November 1, 1987; amended effective March 1, 1988; March 1, 1990; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-40.2-02.1

81-04.1-04-20.1. Highway contractor's tax. Repealed effective April 1, 2006. Effective for contracts bid on or after August 1, 1993, a contractor who enters into a highway contract is responsible for a license or privilege tax of five percent on the gross proceeds from such contract.

~~The department of transportation shall identify those contractors who are responsible for the tax.~~

~~Forms for reporting the license or privilege tax will be prepared and distributed by the office of tax commissioner. The tax is due within thirty days after the contractor receives payment, whether such payment is in whole or in part.~~

~~Administrative provisions of the sales tax chapter apply to the highway contractor's tax.~~

History: ~~Effective August 1, 1994.~~

General Authority: ~~NDCC 57-39.2-19; S.L. 1993, ch. 564~~

Law Implemented: ~~S.L. 1993, ch. 564~~

81-04.1-04-40. Rentals and rental agencies. The lease or rental of tangible personal property is subject to sales tax based on the periodic payments as they are made. Sales tax is applied based on where the lease or rental equipment will be located in the state.

Examples of lease or rental transaction include:

1. A customer picks up lease or rental equipment for the day from a rental business. State and local sales tax will apply to the lease or rental charge based upon the location of the rental business.
2. A customer has lease or rental equipment delivered to the customer's location for the day. State and local sales tax will apply to the lease or rental charge based upon the location of the customer.
3. A customer enters into a six-month lease of equipment with lease payments due monthly. The customer picks up the equipment at the lessor's business location in the state. Because the customer first takes possession of the equipment at the lessor's business location, the first lease payment is subject to sales and local sales tax based on the lessor's business location. Sales tax on subsequent lease payments will be due based on the location where the equipment is stored or used in this state. If stored or used outside this state, the subsequent lease payments applying to this period of time will not be taxable.

North Dakota sales tax law continues to provide an exemption from sales tax on lease or rental receipts for tangible personal property purchased for lease or rental when sales or use tax had been paid to North Dakota on the purchase price.

In a lease-purchase arrangement, sales tax must be charged on the rentals until the option is exercised. When the option is exercised, sales tax must be charged on any additional amount the purchaser must pay to complete the purchase.

An agent acting for an undisclosed principal and leasing tangible personal property to the public is the owner, and the rentals received are subject to sales tax. Tax applies to the full rental as long as the leased item is used within this state.

Persons engaged in the business of leasing or renting tangible personal property other than motor vehicles are retailers and subject to sales tax. Purchases by rental agencies of items to be leased or rented are purchases for resale and are not subject to sales tax. A certificate of resale must be presented to the seller for these purchases.

The term "sale" does not include sales or rentals of motor vehicles licensed by the director of the North Dakota department of transportation on which the motor vehicle excise tax has been paid to North Dakota.

When the sales tax rate changes during the term of an existing lease, the rate of tax to be charged on the remaining lease or rental payments will reflect the new rate of tax.

In a sale-leaseback arrangement, when a company purchases or owns tangible personal property on which applicable sales and use taxes were paid, and enters into a sale-leaseback arrangement with a financial business for the sale and leaseback of the same property, no sales tax shall apply to the transfer of title to the business or subsequent lease to the company. The subsequent sale of the property by the financial business at the conclusion of the lease is subject to sales tax. "Leaseback" means a transaction involving the sale of property and the seller's simultaneous lease of the property from the purchaser.

History: Effective June 1, 1984; amended effective October 1, 1986; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-04-41.1. Communication service.

1. The gross receipts from the sale of all communication services, including telecommunications services and ancillary services, provided in the state are subject to sales tax provided the communication service originates and terminates within the state's borders, regardless of where the billing for the service is made.
2. ~~"Communication service" is the transmission of any interactive electromagnetic communication, including voice, image, data, and any other information, by means of wire, cable, fiber optic, microwave, radio wave, any combination of such media, or any other method now in existence or that may be devised.~~

3. Taxable communication services include the following:
- a. ~~Basic telephone service~~ Telecommunications services;
 - b. ~~Toll telephone service~~ Ancillary services; and
 - c. ~~Teletypewriter or computer exchange service;~~ Access charges, including internet access charges billed to retail customers, unless otherwise prohibited by federal law.
 - d. ~~Cellular mobile communication service;~~
 - e. ~~Mobile radio service; and~~
 - f. ~~Two-way paging service.~~
4. ~~Auxiliary or enhanced services are taxable and include charges for connection or reconnection of communication services, charges connected with the transmission of any message or image, charges for storage of data connected with communication services, call waiting, and call forwarding. Access charges billed to retail consumers are also taxable.~~
5. 3. Mobile telecommunications services. A mobile telecommunications company that provides communication services, as defined in North Dakota Century Code chapter 57-34.1, to retail consumers shall use the location of the customer's place of primary use for the purpose of determining whether tax is due on services charged to the customer. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.
6. 4. Taxable communication services do not include:
- a. One-way communication service;
 - b. Purchase of communication service from one communication provider to another, for resale to a retail consumer, provided a certificate of resale is provided to the seller by the purchaser;
 - c. Charges for interstate communication service;
 - d. Communication services to exempt entities;
 - e. Communication services to Indian retail consumers enrolled and living on an Indian reservation within this state; and

- f. 911 emergency telephone charges.
7. 5. Charges for nontaxable services must be separately stated from charges for taxable services. In the case of a bundled transaction that includes telecommunications service, ancillary service, or internet access:
- a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including nontax purposes.
 - b. The provisions of this rule shall apply unless otherwise prohibited by federal law.
6. Definitions. For the purposes of this section, the following definitions apply:
- a. "Ancillary service" means services that are associated with or incidental to the provisions of "telecommunications services", including "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".
 - b. "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone that accepts direct deposits of money to operate.
 - c. "Conference bridging service" means an "ancillary service" that links two or more participants in an audioconference or videoconference call and may include the provision of a telephone number. Conference bridging service does not include the "telecommunications services" used to reach the conference bridge.
 - d. "Detailed telecommunications billing service" means an "ancillary service" of separately stated information pertaining to individual calls on a customer's billing statement.
 - e. "Directory assistance" means an "ancillary service" of providing telephone number information or address information, or both.
 - f. "Fixed wireless service" means a telecommunications service that is transmitted, conveyed, or routed, regardless of the technology used, whereby the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

- g. "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia and United States territories or possessions.
- h. "Interstate" means a telecommunications service that originates in one United States state, territory, or possession, and terminates in a different United States state, territory, or possession.
- i. "Intrastate" means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in the same United States state or United States territory or possession.
- j. "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.
- k. "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages or sounds, or both.
- l. "Pay telephone service" means a telecommunications service provided through any pay telephone.
- m. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid in advance, and that is sold in predetermined units of dollars of which the number declines with use in a known amount.
- n. "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
- o. "Residential telecommunications service" means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including

an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.

P. "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The phrase "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include:

- (1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;
- (2) Installation or maintenance of wiring or equipment on a customer's premises;
- (3) Tangible personal property;
- (4) Advertising, including directory advertising;
- (5) Billing and collection services provided to third parties;
- (6) Internet access service;
- (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing or transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include cable service, as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- (8) "Ancillary services" or digital products delivered electronically, including software, music, video, reading materials, or ring tones.

- g. "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data, primarily for the purpose other than transmission, conveyance, or routing.
- f. "Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services", which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including "conference bridging services".
- s. "Voice mail service" means an "ancillary service" that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.
- t. "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.
- u. "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

History: Effective April 1, 1995; amended effective June 1, 2002; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

CHAPTER 81-06.1-02

81-06.1-02-05. Tax deductions allowed to ~~dealers~~ retail outlets. For purposes of administering North Dakota Century Code section 57-43.1-27, the following procedures apply:

1. On a sale of motor vehicle fuel made to a retail outlet ~~or other entity~~ not licensed by the tax commissioner, a ~~dealer~~ supplier or distributor must credit the retail outlet or other entity with a one-half of one percent shrinkage and tax collection allowance. The allowance must be documented on the face of the delivery invoice, and the ~~dealer~~ supplier or distributor shall deduct the allowance from taxable gallons on the ~~dealer's~~ supplier's or distributor's tax return.
2. On a transfer of product to a ~~dealer's~~ supplier's or distributor's retail storage facility or pump, a credit may be allowed for a one-half of one percent shrinkage and tax collection allowance, provided:
 - a. The transfer is treated as a sale documented by a sales invoice.
 - b. The per gallon tax is reported and paid on the monthly report for the month in which the product is transferred.
 - c. The product transferred is deducted from the ~~dealer's~~ supplier's or distributor's inventory as sold or used. The allowance must be documented on the face of the delivery invoice, and the ~~dealer~~ supplier or distributor shall deduct the allowance from taxable gallons on the dealer's tax return.
3. On a sale of fuel made by a ~~dealer~~ supplier or distributor to another supplier or distributor, or on a sale to a fuel user, including a person who uses fuel for agricultural purposes, the one-half of one percent shrinkage and tax collection allowance credit may not be taken on the ~~dealer's~~ supplier's or distributor's tax return.

History: Effective June 1, 1984; amended effective November 1, 1991; June 1, 2002; April 1, 2006.

General Authority: NDCC 57-43.1-30, ~~57-43.2-22~~

Law Implemented: NDCC ~~57-43.1-24, 57-43.1-26,~~ 57-43.1-16, 57-43.1-27, ~~57-43.2-24~~

CHAPTER 81-09-02

81-09-02-04. Due dates for filing a return and paying tax. If the due date for filing a return and paying the tax owed falls on a Saturday, Sunday, or legal holiday, the return and payment are due on the next business day. If a taxpayer is required to file an amended return, this return is due on the date set by the commissioner. A return ~~or payment~~ is delinquent if it is postmarked or transmitted after the due date. A payment is delinquent if it is postmarked, or an electronic payment is initiated, after the due date.

History: Effective July 1, 1989; amended effective June 1, 2002; April 1, 2006.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-05, 57-51-06, 57-51-10

81-09-02-05. Extension of due date for filing a return or paying tax.

1. A taxpayer may request that the due date for payment of the tax be extended by a maximum of fifteen days. In addition, a taxpayer may request that the due date for filing a return be extended. However, if tax is due with the return, the due date for filing will only be extended by a maximum of fifteen days.
2. A taxpayer may request an extension of time either verbally or in writing. A verbal request must be made on or before the due date for paying the tax or filing the return. A written request must be received by the commissioner on or before the due date for paying the tax or filing the return. Both a verbal and written request must advise the commissioner as to why the extension of time is needed.
3. If a request for an extension of time is approved verbally, the taxpayer shall ~~send a letter~~ submit written notice to the commissioner confirming this fact within five days of the date the request was approved. If a request is not approved verbally, the commissioner shall promptly notify the taxpayer in writing as to whether the request is approved or denied.
4. If a request for an extension of time for filing a return is approved, the taxpayer shall compute and pay with the return extension interest at the rate of twelve percent per annum. The daily interest rate is .000333. Interest is computed from the original due date of the return to the date the tax is paid, which is the date the payment is mailed or an electronic payment is initiated.

History: Effective July 1, 1989; amended effective June 1, 1992; April 1, 2006.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-05, 57-51-06

81-09-02-06. Penalty for failure to file a return and procedure for review of imposition of penalty.

1. The term "taxpayer" includes any person or entity that is responsible for filing a tax or information return.
2. For purposes of this section, the terms "tax return" and "information return" have the meanings provided in section 81-09-02-01.
3. A taxpayer is subject to a penalty of twenty-five dollars per day for each well or unit for which a tax or information return has not been filed. This penalty must be ~~apportioned to the general fund~~ collected in the same manner as gross production taxes and apportioned as other gross production tax penalties.
4. The commissioner shall notify the taxpayer of imposition of the failure to file penalty by certified mail, return receipt requested. The notice of imposition of failure to file penalty must specify the wells or units for which a return was not filed, the reporting periods for which a return was not filed, and the amount of penalty assessed. If the taxpayer objects to the imposition of the penalty, the taxpayer may protest by filing an administrative complaint with the commissioner within thirty days of the notice of imposition of penalty for failure to file a return. The taxpayer will be granted an automatic extension of thirty days to file a complaint, provided the taxpayer makes a request for extension within thirty days of the notice. If the taxpayer fails to protest within thirty days of the notice and the penalty remains unpaid, the commissioner may bring an action to collect the penalty for failure to file a return. The two-year statute of limitations on actions under North Dakota Century Code section 28-01-18 applies to imposition of this penalty by the commissioner and to protest of this penalty by the taxpayer.
5. The taxpayer may request a hearing before the commissioner relating to the imposition of the penalty for failure to file a return. An administrative complaint filed by the taxpayer must be served personally or by certified mail. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative hearing, including any appeal from a decision rendered by the commissioner.

History: Effective July 1, 1989; amended effective April 1, 1995; April 1, 2006.

General Authority: NDCC 28-01-18, 57-51-21

Law Implemented: NDCC 57-51-06

CHAPTER 81-09-03

81-09-03-02. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-51.1, unless the context requires otherwise, the following definitions apply:

1. "Completion" or "completed" means an oil well will be considered completed when the first oil is produced through wellhead equipment after production casing has been run.
2. "Drilled" means the spudding of a well.
3. "Horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well ~~after March 31, 1995~~. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered and recompleted as a horizontal well ~~after March 31, 1995~~. As applied to the horizontal reentry of a vertical well, a reentry means the reentering of a well that has been plugged as determined by the industrial commission under section 43-02-09-01.
4. "Incremental production" means the oil which has been classified as incremental by the industrial commission pursuant to subsections 5 and 6 of North Dakota Century Code section 57-51.1-03.
5. "New well" means a well initially drilled and originally completed after April 27, 1987, to a separate and distinct reservoir as recognized by the industrial commission.
6. "Nonincremental production" means the oil which has not been classified as incremental by the industrial commission.
7. "Reservoir" means a common source of supply as defined by the industrial commission.
8. "Test oil" means oil recovered during and after drilling but before normal completion of a well.
9. "Unit" means the total area of land that results from the combining of interests in all or parts of two or more leases or fee interests in order to operate the reservoir as a single production unit subject to a single operating interest. A unit may be formed by an agreement between the mineral interest owners (voluntary unitization) or by order of an agency of the state or federal government (compulsory unitization). A unit does not include "poolings" resulting from the enforcement of

spacing requirements. This definition is only effective for periods prior to April 27, 1987.

History: Effective August 1, 1986; amended effective October 1, 1987; March 1, 1990; June 1, 1992; April 1, 1996; April 1, 2006.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(3)(4)(5)(8), 57-51.1-03(3)

81-09-03-08. Work-over exemption. The twelve-month period runs consecutively from the first day of the third month after completion of the work-over project, even though all or a portion of the exemption may be rendered ineffective by the oil price trigger.

The commissioner must receive a work-over qualification letter signed by a representative of the industrial commission stating that the work-over project meets the requirements set forth in North Dakota Century Code section 57-51.1-03. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The letter must also provide the following information:

1. The name of the lease.
2. The location of the well.
3. The name of the party entitled to the tax exemption.
4. ~~The date the notice of intention was filed.~~
5. The average daily production of the well during the latest six calendar months of continuous production.
6. 5. The cost of the work-over project.
7. 6. The average daily production of the well during the first sixty days after completion of the work-over project, if the cost of the work-over project is sixty-five thousand dollars or less.
8. 7. The dates on which the work-over project was performed.

The commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.

History: Effective March 1, 1990; amended effective June 1, 1992; August 1, 1994; June 1, 2002; April 1, 2006.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-03

81-09-03-09. Trigger provision applicable to oil extraction tax rate. The trigger becomes effective starting with the first day of the first month following the

five-month period in which the average price exceeded the trigger price. The oil extraction tax percentage will revert back to the reduced or exempt rate beginning on the first day of the first month following the five-month period in which the average price of crude oil was below the trigger price provided the wells still qualify for the reduced rate or exemption. The trigger provisions do not apply to stripper wells, wells drilled on Indian land, or incremental production from an enhanced recovery project.

History: Effective June 1, 1992; amended effective August 1, 1994; June 1, 2002; April 1, 2006.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-03

81-09-03-11. Two-year inactive well exemption.

1. A two-year inactive well exemption starts with the first day of the month in which the industrial commission's certification of well status is received by the tax commissioner.
2. A two-year inactive well is a well that has not produced oil in more than one month in the any consecutive twenty-four-month period ~~immediately preceding the date an application for well status is received by the industrial commission.~~ A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.
3. The inactive well exemption is applicable to all oil produced during the exemption period after the well is certified as a two-year inactive well.
4. The ten-year exempt period runs consecutively from the month the tax commissioner receives the industrial commission's certification even though all or a portion of the inactive well exemption may be rendered ineffective by the oil price trigger described in this section.
5. To be eligible for the inactive well exemption, the commissioner must receive a copy of the industrial commission's certification ~~stating the date the application for well status was received by the industrial commission and~~ stating that the well qualifies as a two-year inactive well. The certification must be submitted to the commissioner within eighteen months after the two-year inactive well's qualification period to receive the exemption from the first day of eligibility. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

History: Effective April 1, 1996; amended effective June 1, 2002; April 1, 2006.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-03(6)

CHAPTER 81-12-01

81-12-01-02. Source of supply. No wholesaler shall purchase any alcoholic beverage for resale from any source other than any of the following:

1. The manufacturer, rectifier, distiller, brewer, ~~or microbrewer,~~ winery, or domestic winery producing the alcoholic beverage.
2. The owner of the trademark under which the alcoholic beverage is packaged for sale to retailers.
3. The United States importer or United States agent for a foreign manufacturer or trademark owner of the alcoholic beverage.
4. The expressly designated agent for North Dakota, or the primary American source of supply, of any of the above.
5. The wholesaler of alcoholic beverages.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-11, 5-03-05, 5-01-14, 5-01-17

81-12-01-03. Liquor manifesting supplier reporting requirements.

1. ~~All persons sending or bringing liquor into North Dakota shall file a North Dakota schedule A report of all shipments and returns for each calendar month with the tax commissioner. The report must be postmarked on or before the fifteenth day of the following month.~~ Liquor suppliers shall file reports detailing sales to wholesalers and returns from wholesalers. The report shall be a schedule A and must include all information required by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
2. ~~Shipments between liquor wholesalers within North Dakota will be accomplished by the transferring wholesaler furnishing the tax commissioner a detailed invoice in duplicate. The report is due no later than the thirtieth day of the month following the month in which a sale is made or in which product was returned. This applies to all reports except those due in February of each year. Reports due in February must be filed no later than the last day of the month. To be timely, reports mailed to the tax commissioner must be postmarked by midnight on the due date. Electronically filed reports must be submitted to the tax commissioner no later than midnight on the due date. When a due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working date after the Saturday, Sunday, or legal holiday.~~

3. The report is not required when there are no transactions to report.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-11, ~~5-02-04~~, 5-03-01, 5-03-04, 5-03-05, 5-03-06, 5-03-09

81-12-01-04. Beer suppliers reporting requirements. ~~Beer~~ Except as provided in North Dakota Century Code section 5-01-16, beer shall not be sent or brought into North Dakota except to licensed wholesalers. All persons sending beer into North Dakota shall send the tax commissioner a copy of the invoice at the time of shipment and file a monthly North Dakota schedule C report with the tax commissioner. The report shall be postmarked on or before the fifteenth day of the following month.

1. Beer suppliers shall file monthly reports detailing sales to wholesalers and returns from wholesalers. The report shall be a schedule C and must include all information required by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
2. The report is due no later than the thirtieth day of the month following the month in which the sales or shipment is made. This applies to all months except February of each year. The report for transactions occurring in the month of January is due no later than the last day of February. When the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday.
3. The report is not required when there are no transactions to report.
4. All beer destined for delivery to a federal enclave in North Dakota for domestic consumption and not transported through a licensed North Dakota wholesaler for delivery to such bona fide federal enclave in North Dakota shall have clearly identified on each individual item that such shall be for consumption within the federal enclave exclusively. Such identification must be in a form and manner prescribed and approved by the tax commissioner.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-11, ~~5-02-04~~, 5-03-01, 5-03-04, 5-03-05, 5-03-06, 5-03-09

81-12-01-05. Beer wholesalers reporting requirements. ~~The monthly North Dakota wholesalers report of beer purchased filed by beer wholesalers shall be accompanied by a check for the full amount of the tax due. The return must be postmarked on or before the fifteenth of each month.~~

1. Tax on beer purchased by a wholesaler is due on or before the fifteenth day of the month following the month of purchase. Payments may be made by check or by electronic means.
2. Reports covering beer purchased during each calendar month must be filed with the tax commissioner on or before the fifteenth day of the month following the month of purchase. The report must provide such detail and be in a format and on a form as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
3. To be timely, tax reports and tax payments mailed to the tax commissioner must be postmarked by midnight on the due date. Electronic tax payments and electronically filed tax reports must be submitted to the tax commissioner no later than midnight on the due date. If the due date falls on a Saturday, Sunday, or legal holiday, the tax payments and tax reports are due on the first business day following the Saturday, Sunday, or legal holiday.
4. Beer purchased from the brewery, or as allowed under section 81-12-01-02, in the preceding calendar month means all beer ordered by the wholesaler which appears on the monthly shipment report submitted invoiced by the brewery, or those sources allowed under section 81-12-01-02, to the ~~tax commissioner~~ wholesaler.
5. Beer in bulk containers means containers ~~not less than one-fourth barrel other than bottles and cans.~~
6. Beer purchased from another beer wholesaler licensed in North Dakota shall not be reported if North Dakota tax was paid to the tax commissioner by the selling wholesaler. Neither wholesaler may take a tax credit under section 81-12-01-06 for these transactions.
7. Beer exported to another state must be reported.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-03-04, 5-03-05

81-12-01-06. Beer tax credit.

1. Beer wholesalers may be given credit of up to ~~three~~ ten dollars on taxes paid on beer which cannot be sold in North Dakota upon receipt of a statement from the licensee explaining the reason such beer is not salable. Tax credits for larger amounts shall be allowed, upon satisfactory proof, after immediate notification to the tax commissioner of an event that prohibits sale of such beer in North Dakota, unless time is not important in proving the facts required by the tax commissioner.

2. Claims for tax credits on beer ~~sold out of~~ exported to another state shall be accompanied by a copy of the return filed in that state.
3. Invoices for sales to military reservations shall be sent to the tax commissioner with the monthly report.
4. Tax credits shall be allowed on bad accounts charged off for income tax purposes only after receipt of a copy of the tax return showing such and receipt of invoices showing the type and quantity of beverages purchased for which payment was not received.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-03-04, 5-03-05

81-12-01-07. ~~Liquor tax information required wholesalers reporting requirements.~~ ~~Liquor wholesalers shall file a North Dakota monthly liquor report with the tax commissioner. The return shall be accompanied by the full amount of tax due on liquor sold the preceding month.~~

1. Tax on liquor sold by a wholesaler is due on or before the fifteenth day of the month following the month of sale. Payments may be made by check or by electronic means.
2. Reports covering liquor sales during each calendar month must be filed with the tax commissioner on or before the fifteenth day of the month following the month of purchase. The report must provide such detail and be in a format and on a form as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
3. To be timely, tax reports and payments mailed to the tax commissioner must be postmarked by midnight on the due date. Electronic tax payments and electronically filed tax reports must be submitted to the tax commissioner no later than midnight on the due date. If the due date falls on a Saturday, Sunday, or legal holiday, the tax payments and tax reports are due on the first business day following the Saturday, Sunday, or legal holiday.
4. Liquor wholesalers shall retain copies of all invoices of liquor sold and make these invoices available for inspection upon request by the tax commissioner in a manner prescribed by chapter 81-01.1-04. The invoices shall show the name and address of the purchaser, the date of sale, the kind of merchandise, the number of cases, and the number

and size of containers per case. The date of sale shall be the date of delivery.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-03-04, 5-03-05

81-12-01-08. Cash for beer. No wholesaler may sell beer to any retailer except for cash. Cash shall include a check dated on or before the day of delivery or an electronic funds transfer initiated on or before the day of delivery. Any wholesaler receiving a check from a retailer which is returned by the bank due to insufficient funds shall immediately notify the retailer. If the check is not made good within forty-eight hours, the wholesaler shall notify the wholesaler's competitors and the tax commissioner. No sales shall be made to such retailer until ~~permitted by the wholesaler~~ notifies the wholesaler's competitors and the tax commissioner that the insufficient funds payment has been cleared.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-11, 5-03-05

81-12-01-09. Commercial credit for liquor. The normal commercial credit between liquor wholesalers and retailers is thirty days. Any wholesaler receiving a check from a retailer which is returned by the bank due to insufficient funds which was given for merchandise received shall immediately notify the retailer. If the check is not made good within forty-eight hours, the wholesaler shall notify the wholesaler's competitors and the tax commissioner. Any wholesaler having an unpaid retail account for merchandise received which is in excess of thirty days shall notify the wholesaler's competitors and the tax commissioner. No sale shall be made by any wholesaler to the account of a retailer who has or had possession of such merchandise until said delinquent account is paid in full and ~~permitted by the wholesaler~~ has notified the wholesaler's competitors and the tax commissioner accordingly. A retail account may not be deemed delinquent for any alleged sale in any instance where there exists a bona fide dispute between the licensee and the wholesaler as to the amount owing as a result of the alleged sale.

History: Effective June 1, 2002; amended effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-11, 5-03-01, 5-03-04, 5-03-05, 5-03-06

81-12-01-10. Promotional items.

1. A wholesaler is allowed to furnish miscellaneous materials to retailers provided the value of the materials furnished does not exceed one hundred dollars per calendar year.

For purposes of this subsection, "miscellaneous materials" means materials that advertise the manufacturer's or wholesaler's alcoholic beverage products.

2. A wholesaler is allowed to furnish point-of-sale items to retailers provided the value of the materials furnished does not exceed five hundred dollars per retail account.

For purposes of this subsection, "point-of-sale" items include outdoor signs, lights, window signs, coolers, and items of a similar nature, and may include manufacturer or wholesale items that advertise the manufacturer's or wholesaler's alcoholic beverage products for display purposes at the retailer location.

3. Contest prizes, premium offers, refunds, and like items may be offered by manufacturers and wholesalers for any consumer promotion. Retailers may distribute coupons and other consumer premiums to customers for redemption by the manufacturer or wholesaler, but not for redemption by the retailer. Retailers shall not seek reimbursement from a manufacturer or wholesaler for any consumer promotion. Officers, employees, and representatives of manufacturers, wholesalers, and retailers shall be excluded from participation in such promotions.

History: Effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-11, 5-03-05

81-12-01-11. Recordkeeping - Items provided to retailers. Each manufacturer or wholesaler of alcoholic beverages shall maintain on file the previous calendar year's records of all equipment, supplies, services, and retailer advertising specialty and product display items furnished to retailers. The previous calendar year's records may be discarded when a next calendar year's records are complete and available for inspection. Records must be made available for inspection by the state tax commissioner upon request.

The records must contain the:

1. Name and address of the retailer receiving the equipment, supplies, services, and retailer advertising specialty and product display items;
2. Item or items furnished;
3. Date item or items furnished;

4. Manufacturer's or wholesaler's cost of the item or items furnished as determined by the manufacturer's invoice price; and
5. Charges to the retailer for the item or items.

History: Effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-11, 5-03-05, 5-03-06

81-12-01-12. Equal information to retailers. Any beer wholesaler who publishes, mails, delivers, or distributes, or in any way directly or indirectly disseminates written price information about alcoholic beverages shall disseminate that information to all of its retailers and the state tax commissioner.

History: Effective April 1, 2006.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-12

