

# HEALTH AND SAFETY

## CHAPTER 225

### HOUSE BILL NO. 1349

(Representatives Price, Nicholas, Svedjan, Schmidt, Kerzman)  
(Senator Krauter)

## RABIES CONTROL AND ERADICATION

AN ACT to amend and reenact sections 23-01-18 and 23-01-19 of the North Dakota Century Code, relating to the control and eradication of rabies.

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

**SECTION 1. AMENDMENT.** Section 23-01-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-01-18. State department of health responsible for control of rabies.** The state department of health is responsible for the prevention and control of rabies. The department shall place its primary emphasis on human exposure cases. The department may provide rabies vaccine for individuals whose net financial resources and income are insufficient to enable them to obtain the vaccine.

1. As used in this section:

- a. "Bite" means any penetration of the skin by teeth.
- b. "Confinement" means separation of the domestic dog or cat from humans, other than the owner, caretaker, or members of the owner's family or the caretaker's associates, and other animals by restriction of the animal in a house or building, fenced yard or pen, or through use of a leash or tether.
- c. "Exposure to rabies" means any bite or nonbite by an animal as defined by the advisory committee on immunization practices.

2. Any animal, other than a domestic dog or cat, whether private property or not, which is not shown to have been currently vaccinated for rabies by a vaccine approved for use on that animal by the national association of state public health veterinarians, inc., and for which there is probable cause to believe has exposed a person, as defined by the advisory committee on immunization practices, must be seized and examined for rabies by the state public health laboratory upon order of the state health officer. The owner of an animal, if any, may not obtain an injunction or otherwise prevent the seizure and examination of the animal for rabies, but is entitled to money damages in the amount of the replacement value of the animal which the person legally owned and possessed if the state health officer had reliable evidence, the preponderance of which shows that the animal was vaccinated by a vaccine approved for use on that animal by the national association of

state public health veterinarians, inc., and that the animal had not exposed a person as defined by the advisory committee on immunization practices, before ordering the animal to be seized and examined. In addition, the department has the authority to quarantine or exterminate any animal suspected of rabies. If requested to do so by local authorities, the department shall assist them in the prevention and control of rabies where an emergency exists.

3. Any domestic cat or dog that bites or otherwise exposes a human to possible rabies, and when the owner can produce evidence of appropriate rabies immunization, must be confined for a period of at least ten days from the time of the bite or exposure. Access for evaluation must be made available to a licensed veterinarian at any time during the confinement period. The cat or dog must be evaluated by a licensed veterinarian on the last day of confinement prior to its release and at any time if it becomes ill during the confinement. If in the opinion of the examining veterinarian the cat or dog has signs or symptoms of rabies during the confinement period, the animal must be humanely destroyed in a manner that preserves the animal for appropriate rabies examination by the department.
4. Any domestic cat or dog that bites or otherwise exposes a human to possible rabies, and when the owner can not produce evidence of appropriate rabies immunization, must be confined at the owner's residence or impounded for a period of at least ten days from the time of the bite or exposure. Judgment regarding impoundment or confinement must be made by a law enforcement officer having appropriate jurisdiction. The officer may consult with a veterinarian, health officer, or physician before making the judgment. The animal must be confined or impounded and observed at the owner's expense. Access for evaluation must be made available to a licensed veterinarian at any time during the confinement period. The cat or dog must be evaluated by a licensed veterinarian at the beginning of confinement, at the first sign of any illness during confinement, and before release from confinement. If at any time the cat or dog becomes ill during the confinement and in the opinion of the examining veterinarian the cat or dog has signs or symptoms of rabies during the confinement period, the animal must be humanely destroyed in a manner that preserves the animal for appropriate rabies examination by the department.
5. Any stray or unwanted domestic cat or dog that bites or otherwise exposes a human to possible rabies must be humanely destroyed in a manner that preserves the animal for appropriate rabies examination by the department as soon as possible after the exposure.

**SECTION 2. AMENDMENT.** Section 23-01-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-01-19. Extermination of rabies.** The state department of health shall obtain the cooperation and assistance of the game and fish department, the state veterinarian, and the ~~predatory animal and rodent~~ damage control division of the department of agriculture in carrying out the provisions of this section and section 23-01-18. It is the duty of the game and fish department and the department of agriculture, or any county sheriff's office or city police department, upon request of the state department of health, to exterminate or quarantine those animals suspected of having rabies and to carry out such other preventative measures as the department may from time to time request.

Approved March 23, 1997

Filed March 24, 1997

## CHAPTER 226

### SENATE BILL NO. 2170

(Senators Nething, Wanzek)

### COUNTY BURIALS

AN ACT to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to the duty of counties to bury deceased residents or inmates of public institutions.

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

**SECTION 1. AMENDMENT.** Section 23-06-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. If the deceased was married, upon the surviving husband or wife.
2. If the deceased was not married but left kindred, upon the person or persons in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses.
3. If the person who has the duty of burial does not bury the body within the time required by this chapter, the person next specified shall bury the body.
4. If the deceased is not survived by a person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for county general assistance purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial or cremation. If the deceased was a resident or inmate of a public institution, the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the burial or cremation. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses, but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

Approved March 6, 1997  
Filed March 6, 1997

## CHAPTER 227

### SENATE BILL NO. 2208

(Senators DeMers, Thane)

(Representatives Gorder, Kerzman, Rose, Svedjan)

## TUBERCULOSIS CONTROL AND ERADICATION

AN ACT to create and enact two new sections to chapter 23-07.1 of the North Dakota Century Code, relating to the control of tuberculosis; to amend and reenact sections 23-07.1-01, 23-07.1-04, 23-07.1-05, 23-07.1-06, 23-07.1-07, 23-07.1-08, 23-07.1-09, 23-07.1-10, 23-07.1-12, 23-07.1-13, and 23-07.1-14 of the North Dakota Century Code, relating to the control and eradication of tuberculosis; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 23-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-01. Declaration of legislative intent.** It is hereby declared that it is the intent of the legislative assembly, as follows: It is the policy of the state of North Dakota to treat persons having tuberculosis ~~in a communicable and contagious stage~~ as dangerous to the health and welfare of the citizens of the state. It is also the policy of the state to declare that all cases of tuberculosis ~~in a communicable or contagious stage~~ should be treated in a licensed hospital, ~~or at home if such home treatment is approved by the state health officer under the guidelines of the state health council~~ an appropriate facility in order to complete the course of therapy for tuberculosis to lower the risk of relapse. To this end, it is declared that isolation provisions to achieve treatment of such ~~communicable or contagious~~ tuberculous persons should be accomplished to the fullest extent regardless of such person's ability to pay. It is further declared that such persons with ~~communicable or contagious~~ tuberculosis must be given full opportunity to enter treatment voluntarily and to seek treatment from physicians and hospitals of their own choice at their own expense. In order to ~~prevent~~ effectively prevent the spread of this disease it is necessary that the state:

1. Further the discovery, care, supervision, and treatment of persons having tuberculosis ~~in a communicable or contagious stage~~.
2. Encourage the use of all available public and private facilities to that end.
3. Regard this tuberculosis program as one of public health and one to be dealt with according to public health requirements rather than those of indigency.

**SECTION 2.** A new section to chapter 23-07.1 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter:

1. "Appropriate facility" includes a licensed hospital, a public or private outpatient clinic, a long term care facility, a correctional facility, or a

person's home, and may also include directly observed therapy under the supervision of the department.

2. "Department" means the state department of health, including local public health boards.
3. "Medically approved course of treatment" means a treatment regimen or therapy prescribed by a licensed physician.
4. "Tuberculosis" includes those cases in which a person is found to have tuberculosis based upon laboratory testing, clinical evidence, or as diagnosed by a physician, the department, or a local health officer.

**SECTION 3. AMENDMENT.** Section 23-07.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-04. State health officer - Designee - Responsibility.** The state health officer or ~~his~~ designee; ~~under the guidelines of the state health council,~~ is responsible for the inpatient and outpatient care of persons afflicted or suspected of being afflicted with tuberculosis ~~in a contagious state~~. If the state health officer determines that suspected or actual tuberculous patients may be adequately cared for on an inpatient basis by contract ~~basis~~ with general hospitals or other appropriate facilities, authority for contracting with such ~~hospitals~~ facilities is granted to the state health officer. In addition, the state health officer is authorized to establish and maintain the necessary outpatient clinics for diagnostic workup and evaluation on all suspected or actual tuberculous patients in the state. The state health officer shall pay the contract fee to general hospitals or other appropriate facilities and provide funds to the outpatient evaluation clinics from funds to be appropriated for this purpose by the legislative assembly. The state's claim on patient benefits as provided in section 23-07.1-03 applies insofar as applicable to tuberculous patients in general hospitals and for services rendered in outpatient clinics. The state health officer or his a designee; ~~under the guidelines of the state health council,~~ has the power to:

1. Do any act necessary and proper in the performance of the functions imposed upon the state health officer by the provisions of this chapter.
2. Issue ~~temporary~~ orders and compel obedience thereto.
3. Administer oaths.

**SECTION 4. AMENDMENT.** Section 23-07.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-05. Reports - ~~Temporary orders~~ Orders for the custody of persons.** Upon a report to or receipt of information by the state health officer or any physician in the state that any person is afflicted with reasonably suspected to have or to have been exposed to tuberculosis and as a source of infection endangers other persons, a report must be made to the state health officer. Upon the receipt of the report, the state health officer shall investigate the matter and if the state health officer is convinced that an active case of infectious the person may have, or may have been exposed to, tuberculosis in a communicable and contagious stage which endangers other persons exists, the state health officer shall request the person to voluntarily seek appropriate care and treatment. If the person refuses to accept voluntary care and treatment, the state health officer; ~~under the guidelines of the state health council,~~ may issue a temporary order for care and treatment as determined by the state health officer. If the state health officer's temporary order is

ignored, the state health officer may issue an order directing the sheriff or any peace officer of the county where the person alleged tubercular person to have tuberculosis resides to compel the attendance of the ~~alleged tubercular~~ person and may provide for suitable housing and care of the person until a hearing is held pursuant to section 23-07.1-08.

Prior to issuing a ~~temporary final~~ order under this section, the state health officer or a designee; ~~under the guidelines of the state health council~~, shall hear all relevant testimony for or against the ~~temporary final~~ order. The examination and hearing on the order must be in the presence of the person alleged tubercular person to have tuberculosis. The alleged tubercular person and any relative may resist the order and the parties may be represented by counsel.

**SECTION 5. AMENDMENT.** Section 23-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-06. Physician's examination - Findings - ~~Order~~ Final order.** The state health officer; ~~under the guidelines of the state health council~~, may appoint a practicing physician to make a personal examination of ~~the a person~~ alleged ~~tubercular person~~ to have tuberculosis and to make such thorough investigation of ~~his~~ that person's condition as will enable the state health officer to determine whether or not ~~such~~ that person has active, infectious tuberculosis ~~in a communicable and contagious stage and is dangerous to the public health~~. As soon as practical after the return of the physician's statement to the state health officer, the state health officer shall conclude ~~his~~ the investigation and make ~~his~~ a determination. If the state health officer finds that the alleged tubercular person does not have active, infectious tuberculosis and is not dangerous to public health ~~he shall make an order dismissing the case shall be dismissed~~. If the state health officer; ~~under the guidelines of the state health council~~, finds that the person does have active, infectious tuberculosis ~~and is dangerous to public health~~, ~~he~~ the state health officer shall issue ~~his temporary~~ a final order ~~which~~ that must:

1. State ~~his~~ findings that ~~such~~ the person does have active, infectious tuberculosis ~~and is dangerous to public health; and~~
2. State that the person is not undertaking a medically approved course of treatment for tuberculosis; and
3. Authorize ~~the medical~~ an appropriate facility specified in the ~~temporary~~ order to receive and keep ~~such person in its facility for administer~~ necessary and appropriate care, treatment, quarantine, ~~and or~~ or isolation until a hearing is held pursuant to section 23-07.1-08.

**SECTION 6. AMENDMENT.** Section 23-07.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-07. Sheriff's execution of state health officer's ~~temporary final~~ order.** The ~~temporary final~~ order of the state health officer, in duplicate, together with the findings of the physician and the findings of the state health officer must be delivered to the sheriff who shall execute the same by conveying the person named therein to the ~~medical~~ facility specified in the order and delivering ~~him~~ the person, together with the findings of the physician and the state health officer's findings and the duplicate of the order, to the person in charge of such ~~medical~~ facility or to the local health officer or a designee if the person is sent home. ~~The person in charge, over his official signature, shall acknowledge the delivery on the original order and the sheriff shall return the order to the state health officer. Return to the state health~~

~~officer may be by certified mail.~~ The sheriff must be allowed reasonable travel expenses, paid by the county, in the same manner and at the same rate as the expenses of other county officials are paid.

**SECTION 7. AMENDMENT.** Section 23-07.1-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-08. Hearing - Order.** Unless waived by the alleged tubercular person, a hearing must be held by the district judge serving the county in which the person alleged tubercular person to have tuberculosis resides within one hundred twenty hours, exclusive of weekends and holidays, after the date of the state health officer's ~~temporary~~ final order. The court may consider all relevant evidence, including the results of a physical examination made pursuant to section 23-07.1-06, and the state health officer and the alleged tubercular person must be afforded an opportunity to testify, to present and cross-examine witnesses, and to be represented by counsel. Upon the request of the state health officer, the state's attorney of the county wherein the hearing is held shall represent the state health officer without additional compensation.

If, upon completion of the hearing, the court finds that the allegation that the person has ~~active, infectious~~ tuberculosis ~~in a communicable and contagious stage~~ has, and the allegation that that person was not undertaking a medically approved course of treatment for tuberculosis prior to the state health officer's final order, have not been sustained by clear and convincing evidence, the court shall dismiss the case and order that the person alleged tubercular to have tuberculosis be discharged if ~~he had been~~ in custody prior to the hearing. If the court finds that the ~~allegation~~ has allegations have been sustained by clear and convincing evidence, the court shall issue an order ~~which shall~~ that must:

1. State its findings that the person does have ~~active, infectious~~ tuberculosis ~~in a communicable and contagious stage~~ and is dangerous to public health; and
2. State that the person has not undertaken a medically approved course of treatment for tuberculosis prior to the state health officer's order; and
3. Authorize the ~~medical~~ facility specified in the state health officer's final order to receive and keep ~~such~~ the person in its facility for necessary and appropriate care, treatment, quarantine, ~~and or~~ isolation for so long as the ~~disease remains in a communicable and contagious stage~~ and the danger to public health exists.

**SECTION 8. AMENDMENT.** Section 23-07.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-09. Appeal to supreme court - Habeas corpus - Hearing.** An appeal from an order of the judge of a district court authorizing a specified medical facility to receive a person for care, treatment, quarantine, and isolation may be taken to the supreme court. In such a proceeding, the state's attorney of the county wherein the appeal is taken, without additional compensation, shall represent the state health officer. The clerk of the district court of the county from which the appeal is taken shall notify the state's attorney of the filing of ~~such~~ the appeal. The appeal must be limited to a review of the procedures, findings, and conclusions of the lower court. All persons placed in the custody of the state health officer under the provisions of this chapter for care, treatment, quarantine, and isolation are entitled to the benefit of the writ of habeas corpus and a determination as to whether a person in ~~such~~

custody has ~~active, infectious tuberculosis in a communicable and contagious stage and is dangerous to public health~~ must be made at the hearing. If the court decides that the person does have ~~active, infectious tuberculosis and is dangerous to public health~~, such the decision does not preclude a subsequent application for a writ or the issuing of a writ upon a subsequent application, if it is alleged that ~~such the~~ person has been restored to health.

**SECTION 9. AMENDMENT.** Section 23-07.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-10. Discharge - Release.** All orders of the state health officer or of a judge of a district court authorizing the reception and retention in custody for care, treatment, quarantine, ~~and or~~ isolation of persons having ~~active and infectious tuberculosis endangering public health~~ are effective only during the continuation of ~~such the~~ condition and any person who is ~~cured or who no longer has~~ completed a medically approved course of treatment for tuberculosis in a communicable and contagious stage must be discharged immediately from custody. The discharge must be made by the state health officer or a designee; ~~under the guidelines of the state health council~~. The person in charge of a medical facility may also release any person admitted to the medical facility under the provisions of this chapter at such times and under such conditions as deemed advisable after consultation with the state health officer or a designee.

**SECTION 10. AMENDMENT.** Section 23-07.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-12. Confinement exception - Quarantine.** Any person who observes quarantine regulations as established by the state health officer; ~~under the guidelines of the state health council~~; and undertakes a medically approved course of treatment for tuberculosis may not be subject to confinement under the provisions of this chapter.

**SECTION 11. AMENDMENT.** Section 23-07.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-13. Tubercular Indian jurisdiction.** Nothing in this chapter requires the admission of an enrolled Indian, resident on any reservation in this state, to any off-reservation institution except upon written request and authorization of the superintendent of the reservation on which said Indian is enrolled. However, in the public interest and with the objective of eradication of tuberculosis in the state of North Dakota, an Indian with ~~active infectious tuberculosis~~ off any reservation is subject to this chapter. It is the responsibility of the Indian affairs commission pursuant to the commission's powers and duties, stated in section 54-36-03, to work closely with the tribal councils and other reservation officials to adopt any agreements found necessary in assisting the state health officer in carrying out his responsibilities under this chapter so that all residents of this state will benefit, and eradication of tuberculosis in North Dakota can be achieved.

**SECTION 12. AMENDMENT.** Section 23-07.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-14. Care of tubercular patients - Acceptance of federal funds - General hospital.** The state health officer, or ~~his~~ a designee, ~~under the guidelines of the state health council~~, is hereby authorized to contract with public or private agencies for the care of ~~tubercular patients~~ persons having tuberculosis. The state health officer is hereby authorized to accept any federal funds or to enter into any

federal programs on behalf of ~~tubercular patients~~ persons having tuberculosis in North Dakota. The state health officer may, ~~under the guidelines of the state health council,~~ also utilize general hospitals or other appropriate facilities in the placement of recalcitrant ~~tuberculous patients~~ persons having tuberculosis.

**SECTION 13.** A new section to chapter 23-07.1 of the North Dakota Century Code is created and enacted as follows:

**Penalty.**

1. A person is guilty of a class A misdemeanor if:
  - a. That person fails to undertake diagnostic examination for tuberculosis upon the request of the state health officer which is based upon the reasonable suspicion that that person has or has been exposed to tuberculosis;
  - b. That person has been diagnosed with tuberculosis and fails to undertake a medically approved course of treatment for tuberculosis; or
  - c. That person is the parent of a minor or guardian of a person who violates subdivision a or b.
2. Upon conviction, the court may order that person to obtain a supervised medically approved course of treatment for tuberculosis until the treatment is completed, in addition to other penalties or conditions provided by law.

Approved April 2, 1997  
Filed April 3, 1997

## CHAPTER 228

### SENATE BILL NO. 2202

(Senator Watne)

### HIV TESTING ORDERS AND HEARINGS

AN ACT to amend and reenact subsection 6 of section 23-07.5-02 of the North Dakota Century Code, relating to testing for the human immunodeficiency virus.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 23-07.5-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Any testing done pursuant to subsection 3, 4, or 5 may be conducted in the most expedient manner possible. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the person to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within five days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
  - a. The patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's blood is not available to be used to test for the human immunodeficiency virus;
  - b. The court finds ~~clear and imminent danger to the public health or the health of~~ probable cause to believe that the person petitioning for the testing and the person has demonstrated a compelling need for the test which cannot be accommodated by other means has had a significant exposure with the person to be tested;
  - c. The petition substitutes a pseudonym for the true name of the person to be tested;
  - d. The court provides the person to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
  - e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and

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

Approved April 10, 1997

Filed April 10, 1997

## CHAPTER 229

### SENATE BILL NO. 2361

(Senators Krauter, Goetz, Urlacher)  
(Representatives Jacobs, Kerzman, Martin)

### BED AND BREAKFAST FACILITY DEFINITION

AN ACT to amend and reenact subsection 1 of section 23-09.1-01 of the North Dakota Century Code, relating to the definition of bed and breakfast facility; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-09.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Bed and breakfast facility" means a private home that is used to provide accommodations for a charge to the public, with not more than ~~four~~ seven lodging units, in which no more than two family style meals per day are provided.

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

Approved April 2, 1997  
Filed April 3, 1997

## CHAPTER 230

### HOUSE BILL NO. 1254

(Representatives Oban, Carlisle, Coats)  
(Senator B. Stenehjem)

## MOBILE HOME PARK LICENSING

AN ACT to amend and reenact sections 23-10-05 and 23-10-06 of the North Dakota Century Code, relating to the licensing of mobile home parks, trailer parks, and campgrounds; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 23-10-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-10-05. License fees.** The department shall charge the following fees for licenses to operate mobile home parks, trailer parks, or campgrounds in this state:

1. For a mobile home park containing at least three but not more than ten lots, fifty dollars.
2. For a mobile home park containing at least eleven but not more than twenty-five lots, seventy-five dollars.
3. For a mobile home park containing at least twenty-six but not more than fifty lots, one hundred dollars.
4. For a mobile home park containing more than fifty lots, one hundred twenty dollars.
5. For a trailer park or campground containing at least three but not more than ten lots, fifty dollars.
6. For a trailer park or campground containing at least eleven but not more than twenty-five lots, seventy-five dollars.
7. For a trailer park or campground containing at least twenty-six but not more than fifty lots, one hundred dollars.
8. For a trailer park or campground containing more than fifty lots, one hundred twenty dollars.

The department shall waive the license fee for any mobile home park, trailer park, or campground owned by the state, a municipality, or a nonprofit organization. The department shall waive all or a portion of the license fee for any mobile home park, trailer park, or campground that is subject to local sanitation, safety, and inspection requirements accepted by the department under section 23-10-02.1. A prorated annual license fee may be charged for new mobile home parks, trailer parks, and campgrounds.

**SECTION 2. AMENDMENT.** Section 23-10-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-10-06. License issuance - Transferability.** The department shall issue a license to the applicant upon approving the application and receiving the license fee. The license must be upon a form prescribed by the department, must be for a term of one year from January first to December thirty-first, and must be renewable upon the same basis as that upon which it was originally issued. A penalty of twenty-five percent of the license fee must be imposed if the license is not renewed on or before January thirty-first following the expiration date. The license must be ~~transferable~~ transferred without charge if the proposed new owner applies in writing for a transfer of the license and certifies that the mobile home park, trailer park, or campground will be operated in accordance with this chapter.

Approved March 13, 1997

Filed March 13, 1997

## CHAPTER 231

### SENATE BILL NO. 2356

(Senators G. Nelson, Tallackson, Traynor)  
(Representatives DeKrey, Dorso, Huether)

## SULFUR DIOXIDE AIR RULES

AN ACT to create and enact a new section to chapter 23-25 of the North Dakota Century Code, relating to the adoption of state ambient air quality rules and standards for sulfur dioxide that are more strict than federal standards; and to provide for retroactive application.

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

**SECTION 1.** A new section to chapter 23-25 of the North Dakota Century Code is created and enacted as follows:

**Sulfur dioxide ambient air quality standards more strict than federal standards prohibited.** The department may not adopt ambient air quality rules or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and refineries when there are no corresponding federal rules or standards. Any ambient air quality standards that have been adopted by the department for sulfur dioxide that are more strict than federal rules or standards under the Clean Air Act, or for which there are no corresponding federal rules or standards, are void as to coal conversion facilities and petroleum refineries. However, the department may adopt rules for dealing with exposures of less than one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory program for dealing with short-term exposures to sulfur dioxide that may be established under the Clean Air Act. Any intervention levels or standards set forth in the rules, however, may not be more strict than federal levels or standards recommended or adopted under the federal program. In adopting the rules, the department shall follow all other provisions of state law governing the department's adoption of ambient air quality rules when there are no mandatory corresponding federal rules or standards.

**SECTION 2. RETROACTIVE APPLICATION OF ACT.** This Act is retroactive in application.

Approved March 20, 1997  
Filed March 20, 1997

## CHAPTER 232

### HOUSE BILL NO. 1410

(Representatives Grosz, Hanson, Carlson)  
(Senators Goetz, Krauter, Traynor)

### AIR RULES MORE STRICT THAN FEDERAL ADOPTION

AN ACT to create and enact a new section to chapter 23-25 of the North Dakota Century Code, relating to when air quality rules that are more strict than federal standards may be adopted and the procedure for adoption of such rules and standards; and to amend and reenact section 23-01-02 of the North Dakota Century Code, relating to the composition of the health council.

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

<sup>1</sup> **SECTION 1. AMENDMENT.** Section 23-01-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings.** The health council consists of ~~nine~~ eleven members appointed by the governor in the following manner: Four persons from the health care field ~~and~~, five persons representing consumer interests, one person from the energy industry, and one from the manufacturing and processing industry. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

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

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<sup>1</sup> Section 23-01-02 was also amended by section 13 of Senate Bill No. 2052, chapter 432.

**Requirements for adoption of air quality rules more strict than federal standards.**

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.
2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If at any time the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information that were not available from the department when it gave its notice of hearing, the department shall give a new notice of hearing not less than ninety days prior to the hearing that clearly identifies the additional or amended studies, analyses, opinions, data or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.
3. In this section:
  - a. "Cost-benefit analysis" means both the analysis and the written document that contains:
    - (1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs. The quantification or numerical estimate must use comparable assumptions (including time periods), specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.
    - (2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department shall not rely on cost, benefit, or risk assessment information that is not

accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.

- b. "Risk assessment" means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:
- (1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.
  - (2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.
  - (3) The major sources of uncertainties in the hazard identification, dose-response, and exposure assessment portions of the risk assessment.
  - (4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department in preparing the risk assessment shall:
    - (a) Rely only upon environmental protection agency approved air dispersion models.
    - (b) Identify the assumptions, inferences, and models that materially affect the outcome.
    - (c) Explain the basis for any choices.
    - (d) Identify any policy decisions or assumptions.
    - (e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.
    - (f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.
  - (5) The range and distribution of exposures and risks derived from the risk assessment.
- c. The risk assessment and cost benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the air pollution control advisory council.

4. This section applies to any petition submitted to the department pursuant to section 23-01-04.1 that identifies air quality rules or standards affecting coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to section 23-01-04.1. This section also applies to any petitions filed under section 23-01-04.1 affecting coal conversion facilities or petroleum refineries that are pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent section 23-01-04.1 conflicts with this section, the provisions of this section govern. This section does not apply, however, to existing rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to any new rules governing such matters.

Approved April 1, 1997

Filed April 2, 1997

## CHAPTER 233

### HOUSE BILL NO. 1257

(Representatives Delmore, S. Kelsh, Kretschmar)  
(Senators DeMers, W. Stenehjem, Traynor)

## EMERGENCY MEDICAL PERSONNEL SUPERVISION

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to supervision of emergency medical services personnel; and to amend and reenact section 23-27-04.3 of the North Dakota Century Code, relating to emergency medical services personnel.

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

**SECTION 1. AMENDMENT.** Section 23-27-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.3. Emergency medical services personnel training, testing, and certification, and quality review.** The state health council shall adopt rules prescribing minimum training, testing, ~~and certification,~~ and quality review standards for ~~prehospital~~ emergency medical services personnel. Rules adopted must include a definition of minimum applicable standards, a definition of ~~prehospital~~ emergency medical services personnel, ~~and provide for a mechanism for certifying persons who have met the required standards, and provide a mechanism to review and improve the quality of care rendered by emergency medical services personnel. Quality review and improvement information, data, records, and proceedings are not subject to subpoena or discovery or introduction into evidence in any civil action.~~

**SECTION 2.** A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

**Supervision of certified emergency service personnel.** Certified emergency medical technicians-intermediate and paramedics, who are employed by a hospital and who are working in a nonemergency setting are under the supervision of the hospital's patient services management.

Approved April 3, 1997  
Filed April 3, 1997

## CHAPTER 234

### SENATE BILL NO. 2301

(Senators Lee, DeMers, Krebsbach)  
(Representatives Keiser, Kilzer, Rose)

## MEDICAL PEER REVIEW RECORDS

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to the confidentiality of and the privilege governing medical peer review records; to amend and reenact sections 31-08-01 and 43-17.1-05.1, and subsection 1 of section 43-17.1-06 of the North Dakota Century Code, relating to records and proceedings of medical review committees and reports to the commission on medical competency; to repeal section 23-01-02.1 of the North Dakota Century Code, relating to medical peer review confidentiality and privilege; to provide for application; and to declare an emergency.

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

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

**Definitions.** As used in this chapter:

1. "Health care organization" means any hospital, hospital medical staff, clinic, long-term or extended care facility, ambulatory surgery center, emergency medical services unit, physician, group of physicians operating a clinic or outpatient care facility, combination of these entities, or federally designated state peer review organization.
2. "Health care provider" means a physician or other person licensed, certified, or otherwise authorized by the law of this state to provide health care services.
3. "Peer review committee" means any committee of a health care organization, composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body, which conducts professional peer review.
4. "Peer review records" means all data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review committee as a part of any professional peer review, regardless of when the record is created. The term does not include original patient source documents. Peer review records also include all communications relating to a professional peer review, whether written or oral, between peer review committee members, peer review committee members and the peer review committee's staff, or peer review committee members and other persons participating in a professional peer review, including the person who is the subject of the professional peer review.
5. "Professional peer review" means all procedures a peer review committee uses or functions it performs to monitor, evaluate, and take action to

review the medical care provided to patients by health care organizations or health care providers to improve patient care and treatment or to provide quality assurance.

**Peer review records - Confidentiality.** Peer review records are confidential and may be used by a peer review committee and the committee members only for conducting a professional peer review.

**Peer review records - Privileged - Exceptions.** Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:

1. Records gathered from an original source that is not a peer review committee;
2. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
3. Peer review records subpoenaed in an investigation conducted by the commission on medical competency pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the board of medical examiners pursuant to section 43-17-30.1. Any peer review records provided to the commission or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

**Peer review committee - Mandatory reports.** A peer review committee shall report to the commission on medical competency any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer review committee fails to make any report required by this section.

**Liability of health care provider to patient.** This chapter does not relieve any health care provider of any liability that the provider has incurred or may incur to a patient as a result of furnishing health care services to the patient.

**Limitation of liability.**

1. A person furnishing peer review records to a peer review committee with respect to any patient examined or treated by a health care provider is not, by reason of furnishing the records, liable in damages to any person or for willful violation of a privileged communication.
2. A health care organization, health care provider, or member of a peer review committee is not liable in damages to any person for any action taken or recommendation made regarding a professional peer review, if the organization, provider, or committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the organization, provider, or committee member.

**SECTION 2. AMENDMENT.** Section 31-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**31-08-01. Admissibility in evidence of business records - Term business defined - Exception.** A record of an act, condition, or event ~~shall be~~ is competent evidence insofar as relevant, if:

1. The custodian or other qualified witness testifies to its identity and the mode of its preparation.
2. It was made in the regular course of business, at or near the time of the act, condition, or event.
3. The sources of information and the method and time of preparation, in the opinion of the court, were such as to justify its admission.

For the purpose of this section, the term "business" ~~shall include~~ includes every kind of business, profession, occupation, calling, or operation of institutions, whether carried on for profit or not. ~~The records and proceedings of any regularly constituted medical review committee of a licensed medical hospital or a medical society in this state shall not be subject to discovery or admissible as evidence.~~

<sup>2</sup> **SECTION 3. AMENDMENT.** Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-05.1. Reports to commission on medical competency - When required.**

A physician, the state medical association and its components, a health care institution in the state, a state agency, a law enforcement agency in the state, or a court in the state having actual knowledge that a licensed physician may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to safely engage in the practice of medicine shall promptly report that information to the commission. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the commission if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee, or on its own motion, the commission may investigate any evidence that appears to show a licensee is or may be medically incompetent, guilty of unprofessional conduct, or mentally or physically incapable of the proper practice of medicine. ~~Any~~ A person required to report under this section who makes a report in good faith ~~may~~ is not be subject to criminal prosecution or civil liability for making the report. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to section 1 of this Act is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report.

**SECTION 4. AMENDMENT.** Subsection 1 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>2</sup> Section 43-17.1-05.1 was also amended by section 4 of House Bill No. 1135, chapter 373.

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician under investigation. The confidentiality of the records by any other statute or law does not affect the validity of the commission's subpoena nor the admissibility of the records and board proceedings; however, the proceedings and records of a committee that are exempt from subpoena, discovery, or introduction into evidence under section ~~23-01-02.1~~ 1 of this Act are not subject to this subsection.

**SECTION 5. REPEAL.** Section 23-01-02.1 of the North Dakota Century Code is repealed.

**SECTION 6. APPLICATION OF ACT.** Section 1 of this Act does not apply in any action that was commenced before the effective date of this Act.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 18, 1997  
Filed April 18, 1997