

SENATE BILL NO. 2117

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to create and enact a new subsection to section 43-17-32.1, a new subsection
2 to section 44-04-18, a new subsection to section 44-04-18.7, and section 44-04-21.3 of the
3 North Dakota Century Code, relating to open records and open meetings; to amend and
4 reenact subsections 10, 12, and 13 of section 44-04-17.1, subsections 5 and 7 of section
5 44-04-18, subsection 1 of section 44-08-18.1, subsection 6 of section 44-04-19.1, subsection 5
6 of section 44-04-19.2, subsections 1 and 3 of section 44-04-21.2, and section 65-05-32 of the
7 North Dakota Century Code, relating to open records and open meetings; and to provide a
8 penalty.

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

10 **SECTION 1.** A new subsection to section 43-17-32.1 of the 1999 Supplement to the
11 North Dakota Century Code is created and enacted as follows:

12 Any medical record of a patient, or other document containing personal information
13 about a patient, which is obtained by the board is an exempt record as defined in
14 section 44-04-17.1.

15 **SECTION 2. AMENDMENT.** Subsections 10, 12, and 13 of section 44-04-17.1 of the
16 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

17 10. "Political subdivision" includes any county or city, regardless of the adoption of any
18 home rule charter, and any airport authority, township, school district, park district,
19 rural fire protection district, water resource district, solid waste management
20 authority, rural ambulance service district, irrigation district, hospital district, soil
21 conservation district, recreation service district, railroad authority, or district health
22 unit.

23 12. "Public entity" means all:

- 1 a. Public or governmental bodies, boards, bureaus, commissions, or agencies of
2 the state, including any entity created or recognized by the Constitution of
3 North Dakota, state statute, ~~or~~ executive order of the governor, order of the
4 president of an institution under the authority of the state board of higher
5 education, or any task force or working group created by the director of a
6 state administrative agency when a majority of the members are not
7 employees of the agency, to exercise public authority or perform a
8 governmental function;
- 9 b. Public or governmental bodies, boards, bureaus, commissions, or agencies of
10 any political subdivision of the state and any entity created or recognized by
11 the Constitution of North Dakota, state statute, executive order of the
12 governor, resolution, ordinance, rule, bylaw, or executive order of the chief
13 executive authority of a political subdivision of the state to exercise public
14 authority or perform a governmental function; and
- 15 c. Organizations or agencies supported in whole or in part by public funds, or
16 expending public funds.
- 17 13. "Public funds" means ~~funds~~ cash and other assets with more than minimal value
18 received from the state or any political subdivision of the state.

19 **SECTION 3. AMENDMENT.** Subsections 5 and 7 of section 44-04-18 of the 1999
20 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 21 5. Any request under this section for records in the possession of a public entity by a
22 party to a criminal or civil action or ~~adverse~~ adversarial administrative proceeding
23 ~~involving that~~ in which the public entity is a party, or by an agent of the party, must
24 comply with applicable discovery rules and be made to the attorney representing
25 that entity in the criminal or civil action or ~~adverse~~ adversarial administrative
26 proceeding. The public entity may deny a request from a party or an agent of a
27 party under this subsection if the request seeks records that are privileged under
28 applicable discovery rules.
- 29 7. This section is violated when a person's right to review or receive a copy of a
30 record that is not exempt or confidential is denied or unreasonably delayed or
31 when a fee is charged in excess of the amount authorized in subsection 2.

1 **SECTION 4.** A new subsection to section 44-04-18 of the 1999 Supplement to the
2 North Dakota Century Code is created and enacted as follows:

3 A disclosure of a requested record under this section is not a waiver of any
4 copyright held by the public entity in the requested record or of any applicable
5 evidentiary privilege.

6 **SECTION 5. AMENDMENT.** Subsection 1 of section 44-04-18.1 of the 1999
7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8 1. Any record of a public employee's medical treatment or use of an employee
9 assistance program is not to become part of that employee's personnel record and
10 is confidential and may not be released without the written consent of the
11 employee. As used in this section, the term "public employee" includes any ~~person~~
12 individual who has applied for employment, is employed, or has been employed by
13 a public entity.

14 **SECTION 6.** A new subsection to section 44-04-18.7 of the 1999 Supplement to the
15 North Dakota Century Code is created and enacted as follows:

16 A computerized index created by a criminal justice agency of names included in
17 criminal files, whether active or inactive, is an exempt record.

18 **SECTION 7. AMENDMENT.** Subsection 6 of section 44-04-19.1 of the 1999
19 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20 6. Following the final completion of the civil or criminal litigation or the adversarial
21 administrative proceeding, including the exhaustion of all appellate remedies,
22 attorney work product must be made available for public disclosure by the public
23 entity, unless another exception to section ~~44-04-19~~ 44-04-18 applies or if
24 disclosure would have an adverse fiscal effect on the conduct or settlement of
25 other pending or reasonably predictable civil or criminal litigation or adversarial
26 administrative proceedings.

27 **SECTION 8. AMENDMENT.** Subsection 5 of section 44-04-19.2 of the 1999
28 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29 5. All meetings of the governing body of a public entity that are not open to the public
30 must be recorded electronically or on audiotape or videotape. The recording must
31 be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or

1 to the attorney general for the purpose of administrative review under section
2 44-04-21.1. The attorney general may not disclose to the public any recording
3 received under this subsection and must return the recording to the governing body
4 upon completion of the administrative review. The recording may be disclosed
5 upon majority vote of the governing body unless the executive session was
6 required to be confidential. Disclosure of the recording by a public servant except
7 as provided in this subsection is a violation of section 12.1-13-01. All recordings
8 under this subsection must be retained for a minimum of six months after the
9 executive session that is the subject of the recording.

10 **SECTION 9. AMENDMENT.** Subsections 1 and 3 of section 44-04-21.2 of the 1999
11 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 12 1. A violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 ~~is not~~
13 ~~a violation of section 12.1-11-06, but~~ may be the subject of a civil action brought by
14 an interested person or entity. For an alleged violation of section 44-04-18, the
15 complaint must be accompanied by a dated, written request for the requested
16 record. If a court finds that any of these sections have been violated by a public
17 entity, the court may award declaratory relief, an injunction, a writ of prohibition or
18 mandamus, costs, disbursements, and reasonable attorney's fees against the
19 entity. For an intentional or knowing violation of section 44-04-18, 44-04-19,
20 44-04-19.2, 44-04-20, or 44-04-21, the court may also award damages in an
21 amount equal to one thousand dollars or actual damages caused by the violation,
22 whichever is greater. An action under this subsection must be commenced within
23 sixty days of the date the person knew or should have known of the violation or
24 within thirty days of issuance of an attorney general's opinion on the alleged
25 violation, whichever is later. Venue for an action is in the county where the entity
26 has its principal office or, if the entity does not have a principal office within the
27 state, in Burleigh County.
- 28 3. The remedies provided in this section are not available if a violation of section
29 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 has been corrected before
30 a civil action is filed and no person has been prejudiced or harmed by the delay.
31 An interested person or entity may not file a civil action under this section seeking

1 attorney's fees or damages, or both, until at least three working days after
2 providing notice of the alleged violation to the chief administrative officer for the
3 public entity. This subsection does not apply if the attorney general has found
4 under section 44-04-21.1, on a prior occasion, that the public entity has violated
5 section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21.

6 **SECTION 10.** Section 44-04-21.3 of the North Dakota Century Code is created and
7 enacted as follows:

8 **44-04-21.3. Attorney general referral and criminal penalties.** The attorney general
9 shall refer to the appropriate state's attorney any public servant as defined in section
10 12.1-01-04 who has been found in more than one opinion issued pursuant to section
11 44-04-21.1 to have violated section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21. A
12 public servant as defined in section 12.1-01-04 who knowingly violates section 44-04-18,
13 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 is guilty of an offense under section 12.1-11-06.

14 **SECTION 11. AMENDMENT.** Section 65-05-32 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **65-05-32. Privacy of records and hearings.** Information contained in the claim files
17 and records of injured employees is confidential and is not open to public inspection, other than
18 to bureau employees or agents in the performance of their official duties. Providing further that:

- 19 1. Representatives of a claimant, whether an individual or an organization, may
20 review a claim file or receive specific information from the file upon the
21 presentation of the signed authorization of the claimant. However, reserve
22 information may not be made available to the claimant or the claimant's
23 representatives. Availability of this information to employers is subject to the sole
24 discretion of the bureau.
- 25 2. Employers or their duly authorized representatives may review and have access to
26 any files of their own injured workers.
- 27 3. Physicians or health care providers treating or examining workers claiming benefits
28 under this title, or physicians giving medical advice to the bureau regarding any
29 claim may, at the discretion of the bureau, inspect the claim files and records of
30 injured workers.

- 1 4. Other persons may have access to and make inspections of the files, if such
2 persons are rendering assistance to the bureau at any stage of the proceedings on
3 any matter pertaining to the administration of this title.
- 4 5. ~~The claimant's name; social security number; date of birth; injury date; employer~~
5 ~~name; type of injury; whether the claim is accepted, denied, or pending; and~~
6 ~~whether the claim is in active or inactive pay status will be available to the public.~~
7 ~~This information may not be released in aggregate form, except to those persons~~
8 ~~contracting with the bureau for exchange of information pertaining to the~~
9 ~~administration of this title or except upon written authorization by the claimant for a~~
10 ~~specified purpose.~~
- 11 6. At the request of a claimant, the bureau may close the medical portion of a hearing
12 to the public.