

HEALTH AND SAFETY

CHAPTER 232

SENATE BILL NO. 2327

(Senators Fischer, Flakoll, Watne)
(Representatives Devlin, Fairfield, Porter)

BIRTH AND DEATH CERTIFICATES

AN ACT to amend and reenact sections 23-02.1-09, 23-02.1-10, and 23-02.1-13, subsection 1 of section 23-02.1-14, sections 23-02.1-19, 23-02.1-20, and 23-02.1-21, and paragraph 2 of subdivision a of subsection 3 of section 50-09-08.2 of the North Dakota Century Code, relating to birth, death, and fetal death certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-09. Compensation of local registrars.

4. Each local registrar must be paid the sum of twenty-five cents for each certificate of ~~birth, death, or fetal death~~ registered by ~~him~~ the registrar and transmitted to the state registrar ~~in accordance with the rules and regulations issued hereunder.~~
2. If no ~~birth, death, or fetal death~~ is registered by ~~him~~ the registrar during any calendar month, the local registrar shall report that fact to the state registrar and be paid the sum of twenty-five cents.

SECTION 2. AMENDMENT. Section 23-02.1-10 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-10. Payment of fees to the local registrar. The state registrar shall certify to the county auditors the number of ~~birth, death, and fetal death~~ certificates registered by each local registrar, with the names of the local registrars and the amount due. Upon ~~such~~ the certification, the fees due the local registrar must be paid by the auditor of the county out of the general fund of the county.

SECTION 3. AMENDMENT. Section 23-02.1-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-02.1-13. Birth registration.

1. A certificate of birth for each live birth ~~which~~ that occurs in this state must be filed with the ~~local~~ state registrar ~~of the district in which the birth occurs within seven days after such birth and must be registered by such registrar if it has been completed and filed in accordance with this section; provided, that when a birth occurs on a moving conveyance, a~~

birth certificate must be filed in the district in which the child is first removed from the conveyance.

2. When a birth occurs in an institution, the person in charge of the institution or ~~his~~ a designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate, and file it with the ~~local~~ state registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within six days after the birth.
3. When a birth occurs outside an institution, the certificate must be prepared and filed by one of the following in the indicated order of priority:
 - a. The physician in attendance at or immediately after the birth, or in the absence of such a person;
 - b. Any other person in attendance at or immediately after the birth, or in the absence of such a person;
 - c. The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.
4. If a man and the mother are or have been married or have attempted to marry each other in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born during the marriage or attempted marriage, or within three hundred days after the termination of cohabitation or after the marriage or attempted marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of ~~such~~ the man must be entered on the certificate as the father of the child unless the presumption of paternity has been rebutted by a court decree.
5. If the child is not born during the marriage of the mother, or within three hundred days after ~~any such~~ a marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the father may not be entered on the birth certificate unless:
 - a. After the child's birth, the father and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
 - (1) He has acknowledged his paternity of the child in writing filed with the state registrar;
 - (2) With his consent, he is named as the child's father on the child's birth certificate; or
 - (3) He is obligated to support the child under a written voluntary promise or by court order;

- b. While the child is under the age of majority, he received the child into his home and openly holds out the child as his natural child;
 - c. After the child's birth, the child's natural mother and the father voluntarily acknowledge the child's paternity in a writing signed by both and filed with the state registrar; or
 - d. A court or other entity of competent jurisdiction has adjudicated paternity.
6. If, in accordance with subsections 4 and 5, the name of the father of the child is not entered on the certificate of birth, the child's surname must be shown on the birth certificate as the legal surname of the mother at the time of birth unless an affidavit or an acknowledgment of paternity signed by both parents is received stating the surname to be that of the father.
7. ~~In the case of a child born out of wedlock, the certificate must be filed directly with the state registrar.~~

SECTION 4. AMENDMENT. Subsection 1 of section 23-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

1. Whoever assumes custody of a living infant of unknown parentage shall report on a form and in the manner prescribed by the state registrar within seven days to the ~~local~~ state registrar ~~of the district in which the child was found,~~ the following information:
- a. The date and place of finding.
 - b. Sex, color, or race, and approximate age of child and approximate date of birth.
 - c. Name and address of the persons or institution with whom the child has been placed for care.
 - d. Name given to the child by the custodian.
 - e. Other data required by the state registrar.

SECTION 5. AMENDMENT. Section 23-02.1-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-02.1-19. Death registration.

1. A death certificate for each death which occurs in this state must be filed with the local registrar of the district in which the death occurred within fifteen days after ~~such~~ the death and must be registered by ~~such~~ the registrar if it has been completed and filed in accordance with this section, provided:
- a. That if the place of death is unknown, a death certificate must be filed in the registration district in which a dead body is found within fifteen days after ~~such~~ the occurrence.

- b. That if a death occurs on a moving conveyance, a death certificate must be filed in the registration district in which the dead body was first removed from the conveyance.
2. Notwithstanding subsection 1, if the state registrar has implemented an automated system that allows each local registrar to produce certified copies of death certificates in the local registrar's offices within two working days of filing, death certificates must be filed with the state registrar.
3. The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate. He The funeral director shall obtain the personal data from the next of kin or the best qualified person or source available. He The funeral director shall obtain the medical certification of cause of death from the person responsible therefor for the medical certification.
3. 4. The medical certification must be completed and signed within fifteen days after death by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by the local health officer or coroner.
4. 5. When death occurred without medical attendance ~~as set forth in subsection 3~~ or when inquiry is required by the local health officer or coroner, the county coroner shall investigate the cause of death and shall complete and sign the medical certification within fifteen days after taking charge of the case.
5. 6. If the cause of death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period, ~~as required by and~~ in accordance with ~~regulations promulgated~~ rules adopted by the state department of health. The attending physician or coroner shall give the funeral director in custody of the body notice of the reason for the delay and final disposition may not be made until authorized by the attending physician or coroner.
6. 7. When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar upon receipt of findings of a court of competent jurisdiction, including the personal data and medical data required to complete the death certificate. ~~Such a~~ The death certificate must be marked "presumptive" and must show on its face the date of registration and must identify the court and the date of the decree.
7. 8. Each death certificate must include the social security number of the decedent, if the information is available. A social security number included on a death certificate is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 6. AMENDMENT. Section 23-02.1-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-02.1-20. Fetal death registration.

1. A fetal death certificate for each fetal death which occurs in this state after a gestation period of twenty completed weeks or more or of less

than twenty completed weeks of gestation where provided by rules ~~and regulations~~ of the state department of health must be filed with the ~~local state registrar of the district in which the delivery occurred within fifteen days after such delivery,~~ and must be registered by such registrar if it has been completed and filed in accordance with this section, provided:

- a. That if the place of fetal death is unknown, a fetal death certificate must be filed in the registration district in which the dead infant is found within fifteen days after the time of finding.
 - b. That if a fetal death occurs in a moving conveyance, a fetal death certificate must be filed in the registration district in which the fetus was first removed from the conveyance.
2. The funeral director ~~or person acting as such~~ who first assumes custody of a fetus shall file the fetal death certificate. In the absence of such a person, the physician or other person in attendance at or after delivery shall file the certificate of fetal death. ~~He~~ The person filing the certificate of death shall obtain the personal data from the next of kin or the best qualified person or source available. ~~He~~ The person filing the certificate of death shall obtain the medical certification of cause of death from the person responsible ~~therefor~~ for the medical certification.
 3. The medical certification must be completed and signed by the physician in attendance at the delivery within fifteen days after the delivery except when inquiry is required by the local health officer or coroner.
 4. When inquiry is required by the local health officer or coroner or in the absence of medical attendance, the county coroner shall investigate the cause of fetal death and sign the medical certification within fifteen days after taking charge of the case.
 5. If the cause of fetal death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period of time, ~~as required by and~~ in accordance with rules ~~and regulations promulgated~~ adopted by the state department of health. The attending physician or coroner shall give the funeral director in custody of the fetus the notice of the reason for the delay and final disposition may not be made until authorized by the attending physician or coroner.
 6. The provision for entering the name of the father of the fetus on the fetal death certificate and the reporting of out of wedlock fetal deaths concur exactly with those set forth in ~~subsections 4 through 7 of section 23-02.1-13.~~

SECTION 7. AMENDMENT. Section 23-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-21. Permits.

1. The funeral director ~~or person acting as such~~ who first obtains custody of a dead body or fetus shall obtain a burial-transit permit ~~prior to~~ before final disposition or removal from this state of the body or fetus.

2. ~~Such~~ The burial-transit permits must be issued by the state registrar or the local registrar or subregistrar of the district where the certificate of death or fetal death will be filed in accordance with the requirements of sections 23-02.1-19 and 23-02.1-20.
3. A burial-transit permit issued under the laws of another state which accompanies a dead body or fetus brought into this state is authority for final disposition of the body or fetus in this state.
4. A permit for disinterment and reinterment is required ~~prior to~~ before disinterment of a dead body or fetus except as authorized by ~~regulations~~ rules or otherwise provided by law. ~~Such~~ The permit must be issued by the state registrar to a licensed embalmer upon proper application.

¹²³ **SECTION 8. AMENDMENT.** Paragraph 2 of subdivision a of subsection 3 of section 50-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

- (2) For encumbering or surrendering any assets held by a financial institution in response to a notice of lien or an execution issued by the state agency as provided in ~~subsection 7 of~~ section 23-02.1-19 and chapter 34-15; or

Approved March 28, 2001
Filed March 28, 2001

¹²³ Section 50-09-08.2 was also amended by section 8 of Senate Bill No. 2160, chapter 152.

CHAPTER 233

HOUSE BILL NO. 1154

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

VETERAN BURIAL LOCATION RECORDING

AN ACT to amend and reenact section 23-06-21 of the North Dakota Century Code, relating to providing information on the burial locations of wartime veterans; and to repeal section 37-03-12 and chapter 37-16 of the North Dakota Century Code, relating to recording of persons who provided military service during World War II and the Korean hostilities and recording the burial places of wartime veterans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06-21. Regulation of cemeteries. All persons, corporations, municipalities, associations, and organizations owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies shall:

1. Provide for a sexton or secretary.
2. Cause the lot or parcel of ground used and designated as a cemetery to be platted into orderly blocks and lots, alleys and streets or driveways, giving to each a distinctive name or number that must be a permanent designation of its location.
3. File the original plat with the register of deeds of the county in which the cemetery or place of burial is located and the copy or blueprint thereof with the sexton or secretary.
4. Register with the state department of health the name and location of the cemetery or place of burial, the name and address of the sexton, and the name and address of other officers of the cemetery association, corporation, or organization.
5. Furnish such information and reports as the state department of health may require including the submission of plans and specifications for review and approval before constructing, erecting, or placing on the burial site for the burial or disposition of any human remains any interment structure or device constructed or placed wholly or partially above the natural surface of the ground.
6. Keep a local register of all burials showing as to each burial the name of the deceased, the date and location of burial, the date of death, and the name and address of the undertaker.
7. ~~Comply with the provisions of section 37-16-02, relating to transmittal of information to the adjutant general regarding the interment of persons~~

~~who served in the military or naval forces of the United States in time of war.~~

SECTION 2. REPEAL. Section 37-03-12 and chapter 37-16 of the North Dakota Century Code are repealed.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 234

SENATE BILL NO. 2341

(Senators Lee, T. Mathern)
(Representatives Mahoney, Price, Svedjan)

ADVANCE HEALTH CARE DIRECTIVES

AN ACT to amend and reenact sections 23-06.4-03, 23-06.5-05, and 23-06.5-16 and subsection 9 of section 23-06.5-17 of the North Dakota Century Code, relating to the form and execution of advance health care directives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06.4-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06.4-03. Declaration relating to use of life-prolonging treatment.

1. An individual of sound mind and eighteen or more years of age may execute at any time a declaration governing the use, withholding, or withdrawal of life-prolonging treatment, nutrition, and hydration. The declaration must be signed by the declarant, or another at the declarant's direction, and ~~witnessed by two individuals who are not~~ contain verification of the declarant's signature or the signature of the person directed by the declarant to sign on behalf of the declarant, either by notary public or by two witnesses who are at least eighteen years of age. A person notarizing the declaration may be an employee of a health care or long-term care provider providing direct care to the declarant. At least one witness to the execution of the declaration must not be a health care provider providing direct care to the declarant or an employee of the health care provider providing direct care to the declarant on the date of execution. The notary public or any witness may not be:
 - a. ~~Related~~ The declarant's spouse or related to the declarant by blood, marriage, or marriage adoption;
 - b. Entitled to any portion of the estate of the declarant under any will of the declarant or codicil to the will or deed, existing by operation of law or otherwise, at the time of the declaration;
 - c. Claimants against any portion of the estate of the declarant at the time of the execution of the declaration;
 - d. Directly financially responsible for the declarant's medical care; or
 - e. Attending physicians of the declarant.
2. ~~If the declarant is a resident of a long-term care facility, as defined in section 50-10.1-01, at the time the declaration is executed, one of the two witnesses to the declaration must be a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may~~

be designated by the department of human services or the district court for the county in which the facility is located.

3. ~~A declaration must be substantially in the~~ The following statutory form, ~~but the~~ is a preferred form, but not a required form, by which a person may execute a declaration. The declaration may include additional specific directives. Another form may be used if it complies with this chapter. The invalidity of any additional specific directives does not affect the validity of the declaration.

I declare on (month, day, year):

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

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

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

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

(c) I am not pregnant.

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

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

- (3) ☐ I make no statement concerning life-prolonging treatment.

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

- (1) ☐ I wish to receive nutrition.

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

- (3) ☐ I do not wish to receive nutrition.
- (4) ☐ I make no statement concerning the administration of nutrition.
- c. I have made the following decision concerning the administration of hydration when my death is imminent (initial only one statement):
- (1) ☐ I wish to receive hydration.
- (2) ☐ I wish to receive hydration unless I cannot physically assimilate hydration, hydration would be physically harmful or would cause unreasonable physical pain, or hydration would only prolong the process of my dying.
- (3) ☐ I do not wish to receive hydration.
- (4) ☐ I make no statement concerning the administration of hydration.
- d. Concerning the administration of nutrition and hydration, I understand that if I make no statement about nutrition or hydration, my attending physician may withhold or withdraw nutrition or hydration if the physician determines that I cannot physically assimilate nutrition or hydration or that nutrition or hydration would be physically harmful or would cause unreasonable physical pain.
- e. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this declaration is not effective during the course of my pregnancy.
- f. I understand the importance of this declaration, I am voluntarily signing this declaration, I am at least eighteen years of age, and I am emotionally and mentally competent to make this declaration.
- g. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

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

Witness _____
Witness _____

- h. Option 1: Notary Public

In my presence on _____ (date),
_____ (name of declarant) acknowledged the
declarant's signature on this document or acknowledged that the
declarant directed the person signing this document to sign on the
declarant's behalf.

(Signature of Notary Public)

My commission expires _____, 20 ____.

i. Option 2: Two Witnesses

Witness One:

(1) In my presence on _____ (date),
_____ (name of declarant)
acknowledged the declarant's signature on this document or
acknowledged that the declarant directed the person signing
this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care or long-term care provider or an
employee of a health care or long-term care provider giving
direct care to the declarant, I must initial this box: [____].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness One)

(Address)

Witness Two:

(1) In my presence on _____ (date),
_____ (name of declarant) acknowledged
the declarant's signature on this document or acknowledged
that the declarant directed the person signing this document
to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care or long-term care provider or an
employee of a health care or long-term care provider giving
direct care to the declarant, I must initial this box: [____].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness Two)

(Address)

4. 3. A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

SECTION 2. AMENDMENT. Section 23-06.5-05 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-05. Execution and witnesses. The durable power of attorney for health care must be signed by the principal ~~in the presence of~~ and that signature must be verified by a notary public or at least two or more subscribing witnesses, neither of whom may who are at least eighteen years of age. A person notarizing the document may be an employee of a health care or long-term care provider providing direct care to the principal. At least one witness to the execution of the document must not be a health care or long-term care provider providing direct care to the principal or an employee of a health care or long-term care provider providing direct care to the principal on the date of execution. The notary public or any witness may not be, at the time of execution, ~~be the agent, the principal's health or long-term care services provider or the provider's employee,~~ the principal's spouse or heir, a person related to the principal by blood, marriage, or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, ~~or~~ any other person who has, at the time of execution, any claims against the estate of the principal, a person directly financially responsible for the principal's medical care, or the attending physician of the principal. ~~The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the durable power of attorney for health care was signed and that the principal affirmed that the principal was aware of the nature of the documents and signed it freely and voluntarily.~~ If the principal is physically unable to sign, the durable power of attorney for health care may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

SECTION 3. AMENDMENT. Section 23-06.5-16 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-16. Use of statutory form. The statutory form of durable power of attorney described in section 23-06.5-17 may be used and is the preferred form, but not a required form, by which a person may execute a durable power of attorney for health care pursuant to this chapter. It is known as "the statutory form of durable power of attorney for health care". Another form may be used if it complies with this chapter.

SECTION 4. AMENDMENT. Subsection 9 of section 23-06.5-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

(state)

(you sign here)

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

NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The person notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the execution of the document must not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

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

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

who has, at the time of executing this document, any claim against the principal's estate.

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

Option 1: Notary Public

In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(Signature of Notary Public)

My commission expires _____, 20__.

Option 2: Two Witnesses

Witness One:

(1) In my presence on _____ (date),
_____ (name of declarant),
acknowledged the declarant's signature on this document or
acknowledged that the declarant directed the person signing
this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health
care provider giving direct care to the declarant, I must initial
this box: [____].

I certify that the information in (1) through (3) is true and
correct.

(Signature of Witness One)

(Address)

Witness Two:

(1) In my presence on _____ (date),
_____ (name of declarant) acknowledged

the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness Two)

(Address)

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 235

SENATE BILL NO. 2451

(Senators D. Mathern, Lee)
(Representative Svedjan)

MEDICAL RECORD ACCESS

AN ACT to amend and reenact subsection 5 of section 23-07.5-02 of the North Dakota Century Code, relating to access to a dead person's medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 23-07.5-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. If a person who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that person, collection of appropriate specimens and testing for the presence of any ~~contagious disease~~ bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the person who experienced the significant exposure. If a facility that received the person who died fails to test for the presence of bloodborne pathogens as required under this subsection, the facility shall provide the physician providing care for the exposed emergency medical services provider, health care provider, or person who rendered aid under chapter 32-03.1 testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the person who experienced the significant exposure.

Approved March 29, 2001
Filed March 29, 2001

CHAPTER 236

HOUSE BILL NO. 1296

(Representative Hawken)
(Senator Fischer)

HIV RECORD MAINTENANCE

AN ACT to amend and reenact section 23-07.5-04 of the North Dakota Century Code, relating to the human immunodeficiency virus record maintenance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-04. Record maintenance. A health care provider, blood bank, blood center, or plasma center that ~~obtains~~ collects a specimen of body fluids or tissues for the purpose of testing for the presence of an antibody to the human immunodeficiency virus shall:

1. Obtain from the subject; ¹ the subject's parent ~~or~~ ¹ legal guardian, or custodian if the subject is a minor; ¹ or the subject's legal guardian if the subject is incapacitated, informed consent for testing or disclosure, unless testing and procedures for disclosure are otherwise provided by law.
2. Maintain a record of the consent received under subsection 1.
3. Maintain a record of the test results obtained.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 237

SENATE BILL NO. 2098

(Human Services Committee)

(At the request of the Indian Affairs Commission)

BASIC AND LONG-TERM CARE BED MORATORIUM

AN ACT to amend and reenact sections 23-09.3-01.1 and 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on expansion of basic and long-term care bed capacity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁴ **SECTION 1. AMENDMENT.** Section 23-09.3-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09.3-01.1. Moratorium on expansion of basic care bed capacity.

1. Except when existing beds are converted for use by a nursing facility that converts licensed nursing facility bed capacity to basic care bed capacity or the alzheimer's and related dementia population under the pilot projects provided for in established under section 50-06-14.4 requests licensure of the facility's existing beds as basic care bed capacity, or unless the applicant demonstrates to the department and to the department of human services that a need for additional basic care bed capacity exists, the department may not issue a license under this chapter for any additional bed capacity above the state's gross licensed capacity of one thousand four hundred seventy-one beds, adjusted by any reduction in beds before July 31, 1999 2001, during the period between August 1, 1999 2001, and July 31, 2004 2003.
2. Transfers of existing beds from one municipality to another municipality must be approved if the licensing requirements are met, during the period August 1, 1999 2001, to July 31, 2004 2003, only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred. Existing licensed beds released by a facility which are not immediately and transferred to another facility may not be banked for future transfer to another facility must become licensed within twenty-four months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, 2001, to July 31, 2003, may occur, only to the extent that the facility transferring beds reduces the facility's licensed capacity by an amount equal to twice the number of beds transferred. A tribal facility may seek to participate, within twenty-four months of any transfer of beds, in the basic care assistance program. Basic care assistance payments may only be made to a tribal facility that agrees to

¹²⁴ Section 23-09.3-01.1 was also amended by section 9 of House Bill No. 1196, chapter 431.

participate and adhere to all federal and state requirements of the basic care assistance program including participation, screening, ratesetting, and licensing requirements.

4. Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of the facility's intent to convert bed capacity. The converted beds must be located in the same block of rooms within the facility.

¹²⁵ **SECTION 2. AMENDMENT.** Section 23-16-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-16-01.1. Moratorium on expansion of long-term care bed capacity.

1. Notwithstanding sections 23-16-06 and 23-16-10, except when existing beds are converted for use by the alzheimer's and related dementia population under the projects provided for in section 50-06-14.4 or when a nursing facility converts basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to nursing facility bed capacity, the state department of health may not issue a license for any additional bed capacity above the state's gross licensed capacity of seven thousand one hundred forty beds, adjusted by any reduction in beds before July 31, 1999 2001, during the period between August 1, 1999 2001, and July 31, 2004 2003.
2. Transfers of existing beds from one municipality to another municipality must be approved if the department of health licensing requirements are met, during the period August 1, 1999 2001, to July 31, 2004 2003, only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred. Existing licensed beds released by a facility ~~which are not immediately and transferred to another facility may not be banked for future transfer to another facility~~ must become licensed within twenty-four months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, 2001, to July 31, 2003, may occur, only to the extent that the facility transferring beds reduces the facility's licensed capacity by an amount equal to twice the number of beds transferred. A tribal facility may seek to participate, within twenty-four months of any transfer of beds, in the medical assistance program. Medical assistance payments may only be made to a medicaid-certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program including participation, screening, ratesetting, and licensing requirements.

¹²⁵ Section 23-16-01.1 was also amended by section 10 of House Bill No. 1196, chapter 431.

4. Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of the facility's intent to convert bed capacity. The converted beds must be located in the same block of rooms within the facility.

Approved April 19, 2001

Filed April 19, 2001

CHAPTER 238

HOUSE BILL NO. 1240

(Representatives Maragos, Delmore, Disrud)
(Senator Schobinger)

MOBILE PARK CHANGE OR CLOSURE

AN ACT to create and enact a new section to chapter 23-10 of the North Dakota Century Code, relating to the change in use or closure of a mobile park.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-10 of the North Dakota Century Code is created and enacted as follows:

Change in use or closure of mobile home park. If the owner of a mobile home park applies for the rezoning of a park, the owner shall post a notice of the proposed rezoning in the park at least five days before the public hearing on the rezoning. In addition, the owner of a mobile home park shall notify all tenants in that park in writing of a change in use at least one hundred eighty days before the change in use. A change in use is a change in the park that would alter any portion of the park which is used to lease to mobile home owners so that the portion will no longer be leased to mobile home owners. The owner or manager may not increase rent within ninety days before giving notice of a change in use for the portion of the park to which the change will apply.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 239

HOUSE BILL NO. 1242

(Representatives Maragos, Delmore, Dosch, Grosz, Meier)
(Senator Dever)

MOBILE HOME SECURITY DEPOSITS

AN ACT to create and enact a new section to chapter 23-10 of the North Dakota Century Code, relating to mobile home security deposits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-10 of the North Dakota Century Code is created and enacted as follows:

Mobile home security deposit. The amount of a security deposit may not be modified after the initial lease agreement between a mobile home park owner and a tenant has been executed by both parties.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 240

HOUSE BILL NO. 1233

(Representatives DeKrey, Weisz)
(Senators Fischer, D. Mathern)

MEDICAL RECORD COPIES

AN ACT to amend and reenact section 23-12-14 of the North Dakota Century Code, relating to copies of medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁶ **SECTION 1. AMENDMENT.** Section 23-12-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-12-14. Copies of medical records.

1. As used in this section, "medical provider" means a licensed individual or licensed facility providing health care services. This section applies to every medical provider unless expressly provided otherwise by law. Upon the written request of a medical provider's patient or any person authorized by a patient, the medical provider shall:
 - a. Provide a free copy of a patient's medical records to a medical provider designated by the patient or the person authorized by the patient, if the records are requested for the purpose of transferring that patient's medical care to another medical provider for the continuation of medical treatment.
 - b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.
2. A written medical records release must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient.
3. It is not a prohibited practice as defined in chapter 26.1-04 for health insurance companies with participating provider agreements to require that subscribers or members are responsible for providing the insurer copies of medical records used for claims processing when using nonparticipating providers.

Approved April 13, 2001
Filed April 13, 2001

¹²⁶ Section 23-12-14 was also amended by section 1 of House Bill No. 1234, chapter 241.

CHAPTER 241

HOUSE BILL NO. 1234

(Representative DeKrey)

MEDICAL RECORDS RELEASE

AN ACT to amend and reenact section 23-12-14 of the North Dakota Century Code, relating to consent to release of medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁷ **SECTION 1. AMENDMENT.** Section 23-12-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-12-14. Copies of medical records.

1. As used in this section, "medical provider" means a licensed individual or licensed facility providing health care services. This section applies to every medical provider unless expressly provided otherwise by law. Upon the written request of a medical provider's patient or any person authorized by a patient, the medical provider shall:
 - a. Provide a free copy of a patient's medical records to a medical provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical care to another medical provider for the continuation of medical treatment.
 - b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.
2.
 - a. A Except as specified in section 26.1-36-12.4 or subsection 3, a written medical records release must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient is valid for the period of time specified in the release or three years, whichever is shorter.
 - b. A patient or any person authorized by the patient may revoke a medical records release at any time by providing written notification to the medical provider.

¹²⁷ Section 23-12-14 was also amended by section 1 of House Bill No. 1233, chapter 240.

3. Notwithstanding the period of validity under subdivision a of subsection 2, a signed medical records release authorizes a medical provider to forward a patient's medical records to another medical provider during the period of time necessary to complete the patient's course of treatment and to conclude all medical and financial aspects of the case.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 242

SENATE BILL NO. 2393

(Senator Mutch)

LIQUEFIED PETROLEUM GAS CONTAINERS

AN ACT to amend and reenact section 23-13-03.2 of the North Dakota Century Code, relating to liquefied petroleum gas containers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-03.2 of the North Dakota Century Code is amended and reenacted as follows:

23-13-03.2. Liquefied petroleum gas containers - Unauthorized filling, transfer, or use - Prohibited covering of identification marks prohibited. It is unlawful for any person except the owner or the owner's authorized agent to fill, drain, or refill a ~~container with~~ liquefied petroleum gas, ~~or any other gas or compounds~~ container; or buy, sell, offer for sale, give, take, loan, deliver, or permit to be delivered, or otherwise use a liquefied petroleum gas container if the container bears upon its surface, in plainly legible characters, the name, initials, mark, or other identifying device of the owner; nor may any person other than the owner of a liquefied petroleum container or a person so authorized by the owner, deface, erase, obliterate, cover up, or otherwise remove or conceal any name, mark, initial, or identifying device on the container.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 243

HOUSE BILL NO. 1457

(Representatives B. Thoreson, Carlisle, Devlin, Sandvig)
(Senators Flakoll, Stenehjem)

RESIDENTIAL RENTAL PROPERTY SMOKE DETECTION SYSTEMS

AN ACT to amend and reenact section 23-13-15 of the North Dakota Century Code, relating to residential rental property smoke detection systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-15 of the North Dakota Century Code is amended and reenacted as follows:

23-13-15. Smoke detection systems for residential rental property - Penalty.

1. All residential rental property with the exception of property covered by section 23-09-02.1 must be equipped with smoke detection systems or other approved alarm systems for the protection of occupants of the property. Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The state fire marshal and local fire departments shall provide information concerning the installation of smoke detection systems to owners of residential rental properties. A system installed in a single family rental dwelling must be maintained and inspected by the tenant occupying the single family rental dwelling. In other dwellings, the landlord is responsible for installation and ensuring the proper operation of the system upon the occupancy of each new tenant. ~~The landlord may require the tenant to sign a certificate stating that the system is in proper working condition, on taking occupancy, if that is the case.~~ The tenant is responsible for maintaining the system during the tenant's occupancy.
2. Nothing in this section may be construed to alter the provisions of chapter 54-21.3 regarding smoke detection systems or alarm systems for newly constructed residences.
3. Any property owner who willfully fails to install a system as required by this section is guilty of a class B misdemeanor.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 244

HOUSE BILL NO. 1297 (Representatives Porter, R. Kelsch) (Senator Cook)

HAZARDOUS WASTE LIMITED LIABILITY

AN ACT to create and enact a new section to chapter 23-20.3 of the North Dakota Century Code, relating to liability of property owners for hazardous waste on their property; and to amend and reenact section 23-31-01 of the North Dakota Century Code, relating to the recovery of costs of environmental emergencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Limited liability for subsequent owners of property.

1. Notwithstanding any other provision of law and except as expressly provided by federal law, a person who acquires property is not liable for any existing hazardous waste or substance on the property if (a) the person acquired the property after the disposal or placement of the hazardous waste or substance on, in, or at the property, and at the time the person acquired the property that person did not know and had no reason to know that any hazardous waste or substance was disposed of on, in, or at the property, (b) the person is a governmental entity that acquired the property by escheat, by tax sale, foreclosure, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation, or (c) the person acquired the property by inheritance or bequest and that person did not know and had no reason to know that any hazardous waste or substance was disposed of on, in, or at the property.
2. To establish that the person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this requirement, a court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property as uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate inspection.
3. A person who has acquired real property may establish a rebuttable presumption that that person has made all appropriate inquiry if that person establishes that, immediately before or at the time of acquisition, that person performed an investigation of the property, conducted by an environmental professional, to determine or discover the obviousness of

the presence or likely presence of a release or threatened release of hazardous waste or substances on the property.

4. The presumption does not arise unless the person has maintained a compilation of the information reviewed in the course of the investigation.
5. This section does not diminish the liability of any previous owner or operator of the property who would otherwise be liable under this chapter and nothing in this section affects the liability under this chapter of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous waste or substance that is the subject of the action relating to the property.
6. As used in this section, environmental professional means an individual, or entity managed or controlled by an individual, who, through academic training, occupational experience, and reputation, such as engineers, environmental consultants, and attorneys, can objectively conduct one or more aspects of an environmental investigation.

SECTION 2. AMENDMENT. Section 23-31-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-31-01. Environmental emergency cost recovery. ~~The~~ Except as provided in section 1 of this Act, the state department of health may recover from the parties responsible for an environmental emergency the reasonable and necessary state costs incurred in assessment, removal, corrective action, or monitoring as a result of an environmental emergency in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1. As used in this chapter, "environmental emergency" means a release into the environment of a substance requiring an immediate response to protect public health or welfare or the environment from an imminent and substantial endangerment and which is in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1, and "reasonable and necessary costs" means those costs incurred by the department as a result of the failure of the parties responsible for the environmental emergency to implement appropriate assessment and corrective action after receipt of written notice from the department. If assessment, removal, monitoring, or corrective action must be initiated prior to identification of the responsible parties, the department may assess those prior costs to the responsible parties at the time they are identified.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 245

SENATE BILL NO. 2124

(Human Services Committee)

(At the request of the State Department of Health)

LEAD-BASED PAINT REMEDIATION AND ABATEMENT

AN ACT to create and enact a new subsection to section 23-25-01, a new subsection to section 23-25-03, and a new subsection to section 23-25-05 of the North Dakota Century Code, relating to lead-based paint remediation and abatement; to amend and reenact section 23-25-03.1 of the North Dakota Century Code, relating to lead-based paint remediation and abatement; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-25-01 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

SECTION 2. A new subsection to section 23-25-03 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Provide by rules a program for implementing lead-based paint remediation training, certification, and performance requirements in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.

SECTION 3. AMENDMENT. Section 23-25-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-25-03.1. Licensing of asbestos and lead-based paint contractors and certification of asbestos and lead-based paint workers. The department is charged with the responsibility of administering and enforcing a licensing program for asbestos contractors and lead-based paint contractors, and a certification program for asbestos workers and lead-based paint workers and is given and charged with the following powers and duties:

1. To require training of, and to examine, asbestos workers and lead-based paint workers.
2. To establish standards and procedures for the licensing of contractors, and the certification of asbestos workers engaging in the abatement of friable asbestos materials or nonfriable asbestos materials that become friable during abatement, and to establish performance standards for asbestos abatement. The performance standards will be as stringent as those standards adopted by the United States environmental protection

agency pursuant to section 112 of the Federal Clean Air Act, as amended.

3. To establish standards and procedures for the licensing of contractors and the certification of lead-based paint workers engaging in the abatement of lead-based paint and to establish performance standards for lead-based paint abatement in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.
4. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates and to suspend or revoke certificates for cause after notice and opportunity for hearing.
- ~~4.~~ 5. To establish an annual fee and renewal fees for licensing asbestos contractors and lead-based paint contractors and certifying asbestos and lead-based paint workers and to establish examination fees for asbestos and lead-based paint workers under section 23-25-04.2. The annual, renewal, and examination fees for lead-based contractors and workers may not exceed those charged to asbestos contractors and workers.
- ~~5.~~ 6. To establish indoor environmental nonoccupational air quality standards for asbestos.
- ~~6.~~ 7. To adopt and enforce rules as necessary for the implementation of this section.

For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the Federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the Federal Clean Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

SECTION 4. A new subsection to section 23-25-05 of the North Dakota Century Code is created and enacted as follows:

For the purpose of ascertaining the state of compliance with this chapter and any applicable rules, any duly authorized officer, employee, or agent of the department may enter and inspect, at any reasonable time, any property, premises, or place on or at which a lead-based paint remediation activity is ongoing. If requested, the department shall provide to the owner or operator of the premises a report that sets forth all facts found which relate to compliance status.

SECTION 5. APPROPRIATION. There is appropriated from special funds derived from federal funds and from other income, the sum of \$117,000, or so much of the sum as may be necessary, to the state department of health for the purpose of regulating lead-based paint activities, for the biennium beginning July 1, 2001, and ending June 30, 2003.

CHAPTER 246

HOUSE BILL NO. 1202

(Representatives Porter, Severson, Galvin, Pollert)
(Senators Christmann, Klein)

EMERGENCY MEDICAL SERVICES OPERATIONS

AN ACT to create and enact section 23-27-04.5 of the North Dakota Century Code, relating to the creation of a quick-response unit service pilot program; to amend and reenact sections 11-28.3-01, 11-28.3-08, 11-28.3-09, 11-28.3-14, 23-12-08, 23-27-01, 23-27-02, 23-27-03, 23-27-04, 23-27-04.1, 23-27-04.2, 23-27-04.3, 23-27-04.4, 57-15-06.7, 57-15-20.2, 57-15-50, 57-15-51, 57-15-51.1, and subsection 21 of section 58-03-07 of the North Dakota Century Code, relating to licensure of emergency medical services operations and mill levies for emergency medical services and rural ambulance services; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-28.3-01 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-01. Territory to be organized - Petition. Whenever twenty percent of the qualified electors, as determined by the vote cast in the last preceding gubernatorial election, residing in any rural territory, equivalent in area to one township or more not presently served by an existing ~~ambulance~~ emergency medical service, elect to form, organize, establish, equip, and maintain a rural ambulance service district, they shall signify their intention by presenting to the county auditor of the county or counties in which the territory is situated, a petition setting forth the desires and purposes of the petitioners. The petition shall contain the full names and post-office addresses of the petitioners, the suggested name of the proposed district, the area in square miles [hectares] to be included therein, and a complete description according to government survey, wherever possible, of the boundaries of the real properties intended to be embraced in the proposed rural ambulance service district. A plat or map showing the suggested boundaries of the proposed district shall accompany the petition, and the petitioner shall also deposit with the county auditor a sum sufficient to defray the expense of publishing the notices required by sections 11-28.3-02 and 11-28.3-03. Provided further that any city located within the area, whether such city has ~~ambulance service~~ emergency medical services or not, may be included in the rural ambulance district if twenty percent or more of the qualified electors residing in the city sign the petition.

SECTION 2. AMENDMENT. Section 11-28.3-08 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-08. Powers of board of directors. The board of directors shall have the following general powers to:

1. Develop a general ~~ambulance~~ emergency medical service program for the district.

2. Make an annual estimate of the probable expense of carrying out the program.
3. Annually certify that estimate to the proper county auditor in the manner provided by section 11-28.3-09.
4. Manage and conduct the business affairs of the district.
5. Make and execute contracts in the name of and on behalf of the district with regard to a general ~~ambulance~~ emergency medical service program.
6. Purchase or lease ambulances, or other emergency vehicles, supplies, and other real or personal property as shall be necessary and proper to carry out the general ~~ambulance~~ emergency medical service program of the district.
7. Incur indebtedness on behalf of the district within the limits prescribed by section 11-28.3-10, authorize the issuance of evidences of indebtedness permitted under section 11-28.3-10, and pledge any real or personal property owned or acquired by the district as security for the same.
8. Organize, establish, equip, maintain, and supervise an ~~ambulance~~ emergency medical service company to serve the district.
9. Generally perform all acts necessary to fully carry out the purposes of this chapter.

SECTION 3. AMENDMENT. Section 11-28.3-09 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-09. ~~Ambulance~~ Emergency medical service policy to be determined. The board of directors shall establish a general ~~ambulance~~ emergency medical service policy for the district and shall annually estimate the probable expense for carrying out that policy. The estimate shall be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year. The auditor or auditors shall levy a tax not to exceed five mills upon the taxable property within the district for the maintenance of the ambulance service district for the fiscal year as provided by law. The tax shall be:

1. Collected as other taxes are collected in the county.
2. Turned over to the secretary-treasurer of the rural ambulance service district, who shall be bonded in the amount of at least five thousand dollars.
3. Deposited by the secretary-treasurer in a state or national bank in a district account.
4. Paid out upon warrants drawn upon the district account by authority of the board of directors of the district, bearing the signature of the secretary-treasurer and the countersignature of the president.

In no case shall the amount of the tax levy exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual

estimate of expense including the amount of principal and interest upon the indebtedness of the district for the ensuing year. The district may include in its operating budget no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated ambulance emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent ambulance emergency medical services sinking fund may be in addition to the actual annual operating budget, but the total of the annual operating budget and the annual ten percent ambulance emergency medical services sinking fund shall not exceed the approved mill levy.

SECTION 4. AMENDMENT. Section 11-28.3-14 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-14. Payments by certain organizations. Any property tax-exempt club, lodge, chapter, charitable home, dormitory, state or county fair association, or like organization located within a rural ambulance service district and outside the boundaries of any city shall pay to the board of directors of the district annually for ambulance emergency medical service an amount agreed upon, but not less than twenty-five percent of the amount which would be levied against the property under the provisions of this chapter if the property were subject to levy.

Funds derived from such payments shall be expended by the district for ambulance emergency medical service supplies and equipment and the training of ambulance emergency medical service personnel.

SECTION 5. AMENDMENT. Section 23-12-08 of the North Dakota Century Code is amended and reenacted as follows:

23-12-08. Ambulance Emergency medical service authorized. Any county or municipality of the state of North Dakota, by itself, or in combination with any other county or municipality of the state of North Dakota, may, acting through its governing body, establish, maintain, contract for, or otherwise provide ambulance emergency medical service for such county or municipality; and for this purpose, out of any funds of such county or municipality not otherwise committed, may buy, rent, lease, or otherwise contract for all such vehicles, equipment, or other facilities or services which may be necessary to effectuate such purpose.

SECTION 6. AMENDMENT. Section 23-27-01 of the North Dakota Century Code is amended and reenacted as follows:

23-27-01. Licensing of ambulance emergency medical services operations - Exception - Waiver. ~~No surface ambulance~~

1. The state department of health shall license emergency medical services operations. After June 30, 2001, the department shall limit the issuance of a license for any new emergency medical services operation based on the needs of the service area if the applicant for the new license was licensed before the effective date of this Act and was subsequently relicensed under section 23-27-04.5.
2. Emergency medical services, as hereinafter defined, may not be advertised or, offered, or provided to the public unless the operator of such service the services is licensed as an emergency medical services operation by the state health council department. A license for operators an operator of ambulance service an emergency medical services operation is nontransferable and the operator must be

separately licensed for each ambulance service which he operation that operator operates. Each ambulance service which operation that is headquartered or dispatched from a separate location must be considered a separate ambulance service operation; however, an operation with a single headquarters site may dispatch vehicles and personnel from more than one location if calls requesting services are received and orders for vehicle dispatch are made at the single headquarters site.

3. The provisions of this chapter do not apply to an operator from another state who is headquartered at a location outside of this state and transports patients across state lines, but ~~no such the operator will be permitted to~~ may not treat patients within this state or pick up patients within this state for transportation to locations within this state, except as provided through regulations by rule.
4. The state health council shall ~~provide through regulations~~ adopt rules for special licenses and waiver provisions for an operator of ~~a surface ambulance service~~ an emergency medical services operation intended for industrial sites not available to the general public.

SECTION 7. AMENDMENT. Section 23-27-02 of the North Dakota Century Code is amended and reenacted as follows:

23-27-02. Definition of surface ambulance emergency medical services.

For the purpose of this chapter, "surface ambulance emergency medical services" means ~~any use of a publicly or privately owned vehicle upon the streets or highways of this state for the prehospital medical stabilization or transportation of persons who are sick, injured, wounded, or otherwise incapacitated or helpless by any person who either holds himself out to the public for such a as being in that service or who regularly provides such a that service. The term includes basic life support ambulance services, advanced life support ambulance services, air ambulance services, and quick-response unit services.~~

SECTION 8. AMENDMENT. Section 23-27-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-03. License fees. The fee for a license to operate an emergency medical services operation and perform ambulance emergency medical services must be set by the state health council at a sum of not more than twenty-five dollars annually, as may be required to defray the costs of administration of the licensing program. Individuals providing emergency medical services may not be assessed this license fee. All license fees must be paid to the state department of health and deposited with the state treasurer and credited to the state general fund.

¹²⁸ **SECTION 9. AMENDMENT.** Section 23-27-04 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04. Standards for operators. ~~No surface ambulance service~~ An emergency medical services operation within this state may ~~be operated~~ not operate

¹²⁸ Section 23-27-04 was also amended by section 1 of House Bill No. 1282, chapter 247.

unless the service operation is licensed in accordance with this chapter and ~~regulations promulgated~~ rules adopted by the state health council. The ~~regulations~~ rules must include, ~~but not be limited to, the following:~~

1. Time when ~~ambulance service shall~~ operator's services must be available.
2. Type of driver's license needed for drivers of ~~ambulance~~ ground vehicles.
3. Training standards for ~~ambulance driver and attendant~~ operation personnel.
4. Equipment ~~needs and equipment certification~~ and ground vehicle standards.
5. Annual license fees.
6. Number of personnel required for each ~~ambulance~~ run.
7. Such other requirements as may be found necessary to carry out the intent of this chapter.

¹²⁹ **SECTION 10. AMENDMENT.** Section 23-27-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.1. Emergency care or services rendered by officers, employees, or agents of prehospital emergency medical service services operations - Physician medical direction. ~~No~~ Any officer, employee, or agent of ~~any prehospital~~ an emergency medical service services operation and ~~no~~ any physician licensed in this state who provides medical direction to ~~any prehospital~~ an emergency medical service services operation, who is a volunteer, who in good faith renders emergency care, services, or medical direction, is not liable to the recipient of the emergency care, services, or medical direction for any civil damages resulting from any acts or omissions by the person in rendering the emergency care, services, or medical direction provided the person is properly trained according to law. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered, provided that the fees do not exceed twenty-four hundred dollars in any calendar year. For a ~~a~~ volunteer ~~physicians~~ physician providing medical direction to ~~prehospital~~ an emergency medical services operation, the twenty-four hundred dollar maximum fees amount is ~~to be~~ calculated separately for each ~~prehospital~~ emergency medical service services operation for which the physician volunteered medical direction. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

SECTION 11. AMENDMENT. Section 23-27-04.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹²⁹ Section 23-27-04.1 was also amended by section 2 of House Bill No. 1282, chapter 247.

23-27-04.2. Prehospital emergency Emergency medical services - State assistance. The state department of health shall assist in the training of personnel of certain ~~prehospital~~ emergency medical services operations as determined by the department and financially shall assist certain ~~prehospital~~ emergency medical services operations as determined by the department in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The department shall adopt criteria for eligibility for assistance in the training of personnel of various types of ~~prehospital~~ emergency medical services operations. To qualify for financial assistance for equipment, a ~~prehospital~~ an emergency medical ~~service~~ services operation shall certify, in the manner required by the department, that the ~~service~~ operation has fifty percent of the amount of funds necessary for identified equipment acquisitions. The department shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The department may establish minimum and maximum amounts of financial assistance to be provided a ~~prehospital~~ to an emergency medical ~~service~~ services operation under this section. If applications for financial assistance exceed the amount of allocated and available funds, the department may prorate the funds among the applicants in accordance with criteria adopted by the department. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

SECTION 12. AMENDMENT. Section 23-27-04.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.3. Emergency medical services personnel training, testing, certification, licensure, and quality review. The state health council shall adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for emergency medical services personnel. Rules adopted must include a definition of minimum applicable standards, a definition of emergency medical services personnel, provide for a mechanism for certifying or licensing 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 13. AMENDMENT. Section 23-27-04.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.4. Supervision of certified or licensed emergency service hospital personnel. Certified or licensed 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.

SECTION 14. Section 23-27-04.5 of the North Dakota Century Code is created and enacted as follows:

23-27-04.5. (Effective through June 30, 2003) Quick-response unit service pilot program. The department shall create and implement a pilot program

that creates incentives for basic life support ambulance services and advanced life support ambulance services to convert to quick-response unit services or create quick-response units in areas not already served. During the first year of the program, a maximum of five new quick-response units may receive a one-time five thousand dollar grant under this program and a maximum of twenty converting ambulance services may receive grants in the amount of five thousand dollars each year for a two-year period. During the second year of the program, the department shall distribute any remaining funds to converting ambulance services or to ten additional newly created quick-response units.

¹³⁰ **SECTION 15. AMENDMENT.** Section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

57-15-06.7. Additional levies - Exceptions to tax levy limitations in counties. The tax levy limitations specified in section 57-15-06 do not apply to the following mill levies, which are expressed in mills per dollar of taxable valuation of property in the county:

1. Counties supporting airports or airport authorities may levy a tax not exceeding four mills in accordance with section 2-06-15.
2. Counties levying an additional tax as provided in section 4-02-27.2 may levy a tax not exceeding two mills for a period of not to exceed ten years.
3. Repealed by S.L. 1995, ch. 61, § 14.
4. Counties levying a tax for extension work as provided in section 4-08-15 may levy a tax not exceeding two mills.
5. Counties levying a tax for extension work as provided for in section 4-08-15.1 may levy a tax not exceeding two mills.
6. Counties levying a tax for gopher, rabbit, and crow destruction as provided in section 4-16-02 may levy a tax not exceeding one-half of one mill.
7. Counties levying a tax for payment of a judgment obtained by the state or a state agency against the county in accordance with section 11-11-46 may levy a tax not exceeding one mill.
8. Counties levying a tax for historical works in accordance with section 11-11-53 may levy a tax not exceeding one quarter of one mill, except that if sixty percent of the qualified electors voting on the question of an increase levy as provided in section 11-11-53 shall approve, a tax may be levied not exceeding three quarters of one mill.
9. A county levying a tax for a booster station in accordance with section 11-11-60 may levy a tax not exceeding two mills.

¹³⁰ Section 57-15-06.7 was also amended by section 2 of House Bill No. 1135, chapter 458, and section 1 of House Bill No. 1405, chapter 511.

10. A county levying a tax to pay expenses of the board of county park commissioners in accordance with section 11-28-06 may levy a tax not exceeding one mill.
11. Repealed by S.L. 1999, ch. 154, § 2.
12. A county levying a tax for a county or community hospital association as provided in section 23-18-01 may levy a tax for not more than five years not exceeding eight mills in any one year or, in the alternative, for not more than fifteen years at a mill rate not exceeding five mills.
13. A county levying a tax for a nursing home authority in accordance with section 23-18.2-12 may levy a tax not exceeding five mills.
14. A county levying a tax for county roads as provided in section 24-05-01 may levy a tax not exceeding five mills if approved as provided in that section.
15. A county levying a tax to establish and maintain a public library service as provided in section 40-38-02 may levy a tax not exceeding four mills.
16. A county levying a tax to provide for vocational and on-the-job training services as provided in section 40-57.2-04 may levy a tax not exceeding one mill.
17. A county levying a tax for farm-to-market and federal-aid roads as provided in section 57-15-06.3 may levy a tax not exceeding the levy established by the ballot approved by the electors as provided in that section.
18. A county levying a tax for a county veterans' service officer's salary, traveling, and office expenses in accordance with section 57-15-06.4 may levy a tax not exceeding one and one-fourth mills.
19. A county levying a tax for planning purposes as provided in section 57-15-06.5 may levy a tax not exceeding three mills.
- 19.1. A county levying a tax for regional or county corrections centers according to section 57-15-06.6 may levy a tax not exceeding five mills.
20. A county levying a tax for advertising purposes as provided in section 57-15-10.1 may levy a tax not exceeding one-half mill.
21. A county levying a tax for abandoned cemetery maintenance as provided in section 57-15-27.2 may levy a tax not exceeding one-tenth of one mill.
22. A county levying a tax for emergency purposes as provided in section 57-15-28 may levy a tax not exceeding two mills.
23. A county levying a tax for county ~~ambulance~~ emergency medical service according to section 57-15-50 may levy a tax not exceeding five mills.
24. A county levying a tax for destruction of weeds along highways as provided in section 57-15-54 may levy a tax not exceeding two mills.

25. A county levying a tax for programs and activities for senior citizens according to section 57-15-56 may levy a tax not exceeding two mills.
26. A county levying a tax for county welfare in accordance with section 57-15-57 may levy a tax not exceeding two mills.
27. A county levying a tax to repay a loan according to section 57-47-04 may levy a tax not to exceed three mills.
28. Tax levies made for paying the principal and interest on any obligations of the county evidenced by the issuance of bonds.
29. A county levying a tax for a job development authority as provided in section 11-11.1-04 or for the support of an industrial development organization as provided in section 11-11.1-06 may levy a tax not exceeding four mills on the taxable valuation of property within the county. However, if any city within the county is levying a tax for support of a job development authority or for support of an industrial development organization and the total of the county and city levies exceeds four mills, the county tax levy within the city levying under subsection 28 of section 57-15-10 must be reduced so the total levy in the city does not exceed four mills.
30. Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding one mill.
31. Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding one and one-half mills.
32. Counties levying a tax in accordance with section 4-02-27.1 for a county fair association may levy a tax not exceeding one-half mill.
33. A county levying a tax for programs and activities for handicapped persons according to section 11-11-65 may levy a tax not exceeding one-half mill.
34. Counties levying an annual tax for human services purposes as provided in section 50-06.2-05 may levy a tax not exceeding twenty mills.
35. A county levying a tax for county parks and recreational facilities in accordance with section 57-15-06.9 may levy a tax not exceeding three mills.
36. A county levying a tax for old-age and survivors' insurance according to section 52-09-08, for social security, for an employee retirement program established by the governing body, for county automation and telecommunications under section 57-15-62, or for any combination of those purposes, may levy a tax not exceeding thirty mills. The portion of the levy under this subsection for county automation and telecommunications under section 57-15-62 may not exceed five mills.

Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

¹³¹ **SECTION 16. AMENDMENT.** Section 57-15-20.2 of the North Dakota Century Code is amended and reenacted as follows:

57-15-20.2. Exceptions to tax levy limitations in townships. The tax levy limitations specified in section 57-15-20 do not apply to the following mill levies, which are expressed in mills per dollar of taxable valuation of property in the township:

1. A township levying a tax for prevention and extinguishment of fires in accordance with section 18-06-10 may levy a tax not exceeding one mill.
2. A township levying a tax to establish a recreation system according to section 40-55-08 may levy a tax not exceeding two and five-tenths mills, except that a township may levy an amount not exceeding eight and five-tenths mills if the provisions of section 40-55-09 are met.
3. A township levying a tax for the purpose of cooperating with the county in constructing and maintaining federal-aid farm-to-market roads in accordance with section 57-15-19.4 may levy a tax not exceeding five mills.
4. A township levying a tax for law enforcement in accordance with section 57-15-19.5 may levy a tax not exceeding five mills.
5. A township levying a tax for mowing or snow removal equipment in accordance with section 57-15-19.6 may levy a tax not exceeding three mills.
- 5.1. A township levying a tax for a legal contingency fund in accordance with section 57-15-22.2 may levy a tax not exceeding ten mills for not to exceed five years.
6. A township levying a tax for airport purposes in accordance with section 57-15-37.1 may levy a tax not exceeding four mills.
7. A township levying a tax for ~~ambulance~~ emergency medical service in accordance with section 57-15-51.1 may levy a tax not exceeding five mills.
8. A township levying a tax for park purposes in accordance with section 58-17-02 may levy a tax not exceeding two mills.

Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

SECTION 17. AMENDMENT. Section 57-15-50 of the North Dakota Century Code is amended and reenacted as follows:

¹³¹ Section 57-15-20.2 was also amended by section 2 of House Bill No. 1405, chapter 511, section 1 of Senate Bill No. 2328, chapter 553, and section 2 of Senate Bill No. 2334, chapter 513.

57-15-50. Levy authorized for county ~~ambulance~~ emergency medical service. Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax not exceeding the limitation in subsection 23 of section 57-15-06.7, for the purpose of subsidizing county ~~ambulance~~ emergency medical services; provided, that this tax must be approved by a majority of the qualified electors of the county voting on the question at a regular or special countywide election. The county may budget, in addition to its annual operating budget for subsidizing ~~ambulance~~ emergency medical service, no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated ~~ambulance~~ emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent ~~ambulance~~ emergency medical services sinking fund must be in addition to the annual operating budget for subsidization, but the total of the annual operating budget and the annual ten percent ~~ambulance~~ emergency medical services sinking fund may not exceed the approved mill levy. If the county contains a rural ambulance service district or rural fire protection district that levies for and provides ~~ambulance~~ emergency medical service, the property within that district is exempt from the county tax levy under this section upon notice from the governing body of the district to the board of county commissioners of the existence of the district.

¹³² **SECTION 18. AMENDMENT.** Section 57-15-51 of the North Dakota Century Code is amended and reenacted as follows:

57-15-51. Levy authorized for city ~~ambulance~~ emergency medical service. Upon petition of ten percent of the number of qualified electors of the city voting in the last election for governor or upon its own motion, the governing body of each city in this state shall levy annually a tax of not to exceed five mills upon its taxable valuation, for the purpose of subsidizing city ~~ambulance~~ emergency medical services; provided, that such tax must be approved by a majority of the qualified electors of the city voting on the question at a regular or special city election. Whenever a tax for county ~~ambulance~~ emergency medical services is levied by a county, any city levying a tax for, or subsidizing city ~~ambulance~~ emergency medical services, shall upon written application to the county board of such county be exempted from such county tax levy. The city may set aside, as a depreciation expense, up to ten percent of its annual ~~ambulance~~ emergency medical service operating or subsidization budget in a dedicated ~~ambulance~~ emergency medical services sinking fund, deposited with the auditor for replacement of equipment and ambulances. The ten percent ~~ambulance~~ emergency medical services sinking fund may be in addition to the actual annual ~~ambulance~~ emergency medical services budget but the total of the annual ~~ambulance~~ emergency medical services budget and the annual ten percent ~~ambulance~~ emergency medical services fund may not exceed the approved mill levy.

SECTION 19. AMENDMENT. Section 57-15-51.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-51.1. Levy authorized for township ~~ambulance~~ emergency medical service. Pursuant to a vote of sixty percent of the qualified electors voting at the annual township meeting, or at a special election called for that purpose upon

¹³² Section 57-15-51 was also amended by section 4 of House Bill No. 1405, chapter 511.

petition of fifty percent of the number of qualified electors of the township voting in the last election for governor, the board of township supervisors shall levy annually a tax approved by the qualified electors not exceeding the limitation in subsection 7 of section 57-15-20.2 for the purpose of subsidizing township ~~ambulance~~ emergency medical service.

¹³³ **SECTION 20. AMENDMENT.** Subsection 21 of section 58-03-07 of the North Dakota Century Code is amended and reenacted as follows:

21. To direct the transfer of township funds to a rural ambulance service district for ~~ambulance~~ emergency medical service within the township.

SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the health care trust fund, not otherwise appropriated, the sum of \$225,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding the quick-response unit service pilot program, for the biennium beginning July 1, 2001, and ending June 30, 2003. The moneys appropriated must be made available by the office of management and budget as requested by the state department of health to pay for the actual costs of the pilot program.

Approved April 13, 2001
Filed April 16, 2001

¹³³ Section 58-03-07 was also amended by section 4 of Senate Bill No. 2328, chapter 553.

CHAPTER 247

HOUSE BILL NO. 1282

(Representatives Porter, Devlin, Ruby, Severson)
(Senator Lee)

MEDICAL ASSISTANCE REIMBURSEMENTS

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to reimbursements from medical assistance; and to amend and reenact sections 23-27-04 and 23-27-04.1 of the North Dakota Century Code, relating to nonmedically necessary ambulance transports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁴ **SECTION 1. AMENDMENT.** Section 23-27-04 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04. Standards for operators.

1. ~~No~~ A surface ambulance service within this state may not be operated unless the service is licensed in accordance with this chapter and regulations promulgated by the state health council. The regulations must include, ~~but not be limited to,~~ the following:
 - ~~4.~~ a. Time when ambulance service ~~shall~~ must be available.
 - ~~2.~~ b. Type of ~~driver's~~ motor vehicle operator's license needed for drivers of an ambulance.
 - ~~3.~~ c. Training standards for an ambulance driver and attendant.
 - ~~4.~~ d. Equipment needs and equipment certification.
 - ~~5.~~ e. Annual license fees.
 - ~~6.~~ f. Number of personnel required for each ambulance run.
 - ~~7.~~ g. ~~Such other~~ Other requirements as may be found necessary to carry out the intent of this chapter.
2. An officer, employee, or agent of any prehospital emergency medical service may refuse to transport an individual for which transport is not medically necessary and may recommend an alternative course of action to that individual if the prehospital emergency medical service has developed protocols that include direct medical control to refuse transport of an individual.

¹³⁴ Section 23-27-04 was also amended by section 9 of House Bill No. 1202, chapter 246.

¹³⁵ **SECTION 2. AMENDMENT.** Section 23-27-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.1. Emergency care or services rendered by officers, employees, or agents of prehospital emergency medical service - Physician medical direction. ~~Ne~~

1. An officer, employee, or agent of any prehospital emergency medical service and ~~ne a~~ a physician licensed in this state who provides medical direction to any prehospital emergency medical service, who is a volunteer, who in good faith renders emergency care, services, or medical direction, is not liable to the recipient of the emergency care, services, or medical direction for any civil damages resulting from any acts or omissions by the person in rendering the emergency care, services, or medical direction provided the person is properly trained according to law.
2. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered, provided that the fees do not exceed twenty-four hundred dollars in any calendar year.
3. For volunteer physicians providing medical direction to prehospital emergency medical services, the twenty-four hundred dollar maximum fees amount is to be calculated separately for each prehospital emergency medical service for which the physician volunteered medical direction. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.
4. An officer, employee, or agent of any prehospital emergency medical service and a physician licensed in this state who provides medical direction to any prehospital emergency medical service who in good faith does not render emergency care, service, or medical direction to an individual based on a determination that transport of that individual to a hospital is not medically necessary is not liable to that individual for damages unless the damages resulted from intoxication, willful misconduct, or gross negligence.

SECTION 3. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

¹³⁵ Section 23-27-04.1 was also amended by section 10 of House Bill No. 1202, chapter 246.

Reimbursement of ambulance services. Medical assistance coverage must include reimbursement of ambulance services for responding to calls to assist covered individuals which do not result in transport. The reimbursement must be at a rate negotiated by the department and the ambulance service.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 248

SENATE BILL NO. 2138

(Human Services Committee)

(At the request of the State Department of Health)

PLASTIC PRODUCTS DEGRADATION AND LABELING

AN ACT to amend and reenact sections 23-32-01 and 23-32-03 of the North Dakota Century Code, relating to plastic products degradation and labeling; and to repeal sections 23-32-02 and 23-32-04 of the North Dakota Century Code, relating to plastic products degradation and labeling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-32-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-32-01. Definitions. As used in ~~sections 23-32-01 through 23-32-04~~ this chapter:

1. "Degradable" means capable of being reduced to environmentally benign subunits under the action of normal environmental forces, including biodegradation, photodegradation, chemical degradation, or hydrolysis within reasonable time lines specific for waste types and waste management methods.
2. "Department" means the state department of health.
3. ~~"Label" means a molded imprint or raised symbol.~~
4. "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.
- ~~5.~~ 4. "Plastic bottle" means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure, and has a capacity of at least sixteen fluid ounces [453.60 grams] but less than five gallons [18.93 liters].
- ~~6.~~ "Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominately of plastic resin, and having a relatively inflexible finite shape or form with a capacity of at least eight ounces [226.80 grams] but not more than five gallons [18.93 liters].

SECTION 2. AMENDMENT. Section 23-32-03 of the North Dakota Century Code is amended and reenacted as follows:

23-32-03. Plastic bottles and containers - Label - Penalty Rules.

- ~~4.~~ All plastic bottles and rigid plastic containers sold in this state after December 31, 1991, must have a label indicating the plastic resin used to produce the bottle or container. The numbers and letters used on the label must be at least one-half inch [12.7 millimeters] high and must

appear on the bottom of the plastic bottle or rigid plastic container. The label must consist of the following numbers, placed inside three triangulated arrows, and letters placed immediately below the three triangulated arrows depending on the plastic resin used. The triangulated arrows must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow must be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints must depict a clockwise path around the code number. The numbers and letters used must be as follows:

- a. 4 PETE if the product used is polyethylene terephthalate.
 - b. 2 HDPE if the product used is high density polyethylene.
 - c. 3 V if the product used is vinyl.
 - d. 4 LDPE if the product used is low density polyethylene.
 - e. 5 PP if the product used is polypropylene.
 - f. 6 PS if the product used is polystyrene.
 - g. 7 OTHER if the product used is multilayer.
 - h. 8 D if the product used is degradable.
- 2. The department shall maintain a list of the label code contained in this section and shall provide a copy of the list to any person upon request.
 - 3. Any person who violates this section is guilty of an infraction.

The department may adopt rules consistent with national or regional standards which relate to the promotion of plastic bottle recycling and the maintenance of safe plastic bottle recycling practices in the state.

SECTION 3. REPEAL. Sections 23-32-02 and 23-32-04 of the North Dakota Century Code are repealed.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 249

HOUSE BILL NO. 1391

(Representatives Wald, Aarsvold, Galvin, Weiler)
(Senators Lindaas, Stenehjem)

PETROLEUM RELEASE REMEDIATION

AN ACT to amend and reenact sections 23-37-01, 23-37-02, 23-37-03, 23-37-04, 23-37-05, 23-37-06, 23-37-07, 23-37-08, 23-37-09, 23-37-10, 23-37-11, 23-37-12, 23-37-13, 23-37-14, 23-37-15, 23-37-16, 23-37-17, 23-37-18, 23-37-19, 23-37-20, 23-37-21, 23-37-22, 23-37-23, 23-37-24, 23-37-25, 23-37-26, 23-37-27, 23-37-28, 23-37-29, and 23-37-30 of the North Dakota Century Code, relating to petroleum release remediation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-37-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-01. (Effective through July 31, 2009 2011) Declaration of purpose. The purpose of this chapter is to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

SECTION 2. AMENDMENT. Section 23-37-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-02. (Effective through July 31, 2009 2011) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer ~~of the owner or operator~~, or a contractor hired by the owner, operator, or insurer ~~has made a payment or that a contractor~~ the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation ~~advisory~~ board.
4. "Commissioner" means the insurance commissioner.
4. 5. "Corrective action" means an action ~~taken to~~ required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. ~~The term also includes compensation paid to third parties for bodily injury or property damage which is determined by the board to be eligible for reimbursement.~~ The term does not include the repair or replacement of equipment or preconstructed property.

- ~~5.~~ 6. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- ~~6.~~ 7. "Department" means the state department of health.
- ~~7.~~ 8. "Fund" means the petroleum release compensation fund.
- ~~8.~~ 9. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~9.~~ 10. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~40.~~ 11. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
- ~~44.~~ 12. "Petroleum" means any of the following:
- a. Gasoline and petroleum products as defined in chapter 19-10.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
- ~~42.~~ 13. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
- ~~43.~~ 14. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
- a. Tanks owned by the federal government.
 - b. Tanks used for the transportation of petroleum.
 - c. A pipeline facility, including gathering lines, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon

application, register the tank and be eligible for reimbursement under this chapter.

- e. A tank used for storing heating oil for consumptive use on the premises where stored.
 - f. A surface impoundment, pit, pond, or lagoon.
 - g. A flowthrough process tank.
 - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
 - i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.
 - j. A tank used for the storage of propane.
 - k. A tank used to fuel rail locomotives or surface coal mining equipment.
 - l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
15. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 3. AMENDMENT. Section 23-37-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-03. (Effective through July 31, 2009 2011) Petroleum release compensation advisory board. The petroleum release compensation advisory board consists of ~~three~~ five members ~~appointed by the governor, two~~ three of whom are active in petroleum marketing, ~~appointed by the governor~~ one of whom is active in the petroleum, crude oil, or refining industry, and one of whom is active in the insurance industry. A member active in petroleum marketing must be appointed from a list of three recommended by the North Dakota retail petroleum marketers association. A member active in the petroleum, crude oil, or refining industry must be appointed from a list of three recommended by the North Dakota petroleum council. A member active in the insurance industry must be appointed from a list of three recommended by the North Dakota professional insurance agents association. Members must be appointed to terms of three years with the terms arranged so that the term of at least one member, but no more than two members, expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board shall be entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

SECTION 4. AMENDMENT. Section 23-37-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-04. (Effective through July 31, 2009 2011) Administration of fund - Staff. The administrator shall administer the fund according to this chapter. The administrator shall convene the board as is may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the administrator regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the administrator which may be appealed to the board, and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the administrator. The claimant or the administrator may appeal the board's decision to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

SECTION 5. AMENDMENT. Section 23-37-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-05. (Effective through July 31, 2009 2011) Adoption of rules. The administrator shall adopt rules regarding its the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, and procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the administrator, and any other rules as may be appropriate to administer this chapter.

SECTION 6. AMENDMENT. Section 23-37-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-06. (Effective through July 31, 2009 2011) Release discovery. If the department has reason to believe a release has occurred, it shall notify the administrator. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 7. AMENDMENT. Section 23-37-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-07. (Effective through July 31, 2009 2011) Owner or operator not identified. The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 8. AMENDMENT. Section 23-37-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-08. (Effective through July 31, 2009 2011) Imminent hazard. Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 9. AMENDMENT. Section 23-37-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-09. (Effective through July 31, 2009 2011) Duty to notify. ~~Nothing in this~~ This chapter ~~limits~~ does not limit any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

SECTION 10. AMENDMENT. Section 23-37-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-10. (Effective through July 31, 2009 2011) Providing of information. Any person whom the administrator or the department has reason to believe is an owner or operator, ~~or~~ the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release, shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 11. AMENDMENT. Section 23-37-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-11. (Effective through July 31, 2009 2011) Examination of records. Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator or the department under section 23-37-10; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 23-37-10, conducting surveys and investigations, and taking corrective action.

SECTION 12. AMENDMENT. Section 23-37-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-12. (Effective through July 31, 2009 2011) Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases, ~~and for legal actions of the administrator or the department.~~ This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

SECTION 13. AMENDMENT. Section 23-37-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-13. (Effective through July 31, 2009 2011) Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, ~~the provisions of this chapter do~~ does not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a ~~cause of action~~ claim for relief brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 14. AMENDMENT. Section 23-37-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-14. (Effective through July 31, 2009 2011) Other remedies. ~~Nothing in this~~ This chapter limits does not limit the powers of the administrator or department, or ~~precludes~~ preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 15. AMENDMENT. Section 23-37-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-15. (Effective through July 31, 2009 2011) Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23-37-17;
2. Any money recovered by the fund under section 23-37-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 16. AMENDMENT. Section 23-37-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-16. (Effective through July 31, 2009 2011) Penalty. A tank owner violating section 23-37-17 is guilty of a class B misdemeanor, unless another penalty is specifically provided.

SECTION 17. AMENDMENT. Section 23-37-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-17. (Effective through July 31, 2009 2011) Registration fee. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than ~~five~~ six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year

the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of five dollars until the money in the fund does not exceed nine million dollars. An owner or operator of a tank that was required to be registered by law on or before July 1, ~~1999~~ 2001, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for any previous years that the tank was required to be registered for which a fee was not paid. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 18. AMENDMENT. Section 23-37-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-18. (Effective through July 31, ~~2009~~ 2011) Reimbursement for corrective action.

1. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:
 - 4- a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;
 - 2- b. The department was given notice of the release as required by federal and state law;
 - 3- c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - 4- d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:

- a. Findings reduced to judgment in federal or state district court within the state of North Dakota or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party;
or
 - c. A written settlement entered into by the parties in which the commissioner or the commissioner's agent has participated. The settlement must be reviewed and approved by the commissioner.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
5. The fund may not compensate for attorneys' fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
7. The fund shall reimburse the department for all costs, attorneys' fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 19. AMENDMENT. Section 23-37-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-19. (Effective through July 31, 2009 2011) Application for reimbursement. Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 23-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 20. AMENDMENT. Section 23-37-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-20. (Effective through July 31, 2009 2011) Administrator to determine costs. A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually

incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 21. AMENDMENT. Section 23-37-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-21. (Effective through July 31, 2009 2011) Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

SECTION 22. AMENDMENT. Section 23-37-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-22. (Effective through July 31, 2009 2011) Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

SECTION 23. AMENDMENT. Section 23-37-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-23. (Effective through July 31, 2009 2011) Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the ~~amount allowed by~~ coverage limits provided by section 23-37-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 24. AMENDMENT. Section 23-37-24 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-24. (Effective through July 31, 2009 2011) Costs exceeding reimbursement. If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 25. AMENDMENT. Section 23-37-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-25. (Effective through July 31, 2009 2011) Coordination of benefits. If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 26. AMENDMENT. Section 23-37-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-26. (Effective through July 31, ~~2009~~ 2011) Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administrator within ~~forty-eight hours~~ fourteen days of being served with a summons and complaint. The owner or operator shall also advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the administrator within ~~forty-eight hours~~ fourteen days of the demand or the negotiations.
3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 27. AMENDMENT. Section 23-37-27 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-27. (Effective through July 31, ~~2009~~ 2011) Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment; and abstract of costs; and a declaration of the fees paid by the defendant to each attorney who appeared in the proceeding.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administrator.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administrator.
4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administrator. The administrator may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property

damage against an owner, operator, or dealer covered registered by the fund; excluding claims for punitive damages or damages for criminal acts.

6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, ~~the maximum liability allowed per person under subsection 2 of section 32-12.2-02~~ one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23-37-18.
8. A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 28. AMENDMENT. Section 23-37-28 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-28. (Effective through July 31, 2009 2011) Matching federal funds.

The administrator and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administrator and the board determine the allowance appropriate.

SECTION 29. AMENDMENT. Section 23-37-29 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-29. (Effective through July 31, 2009 2011) Fund appropriations.

Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this chapter.

SECTION 30. AMENDMENT. Section 23-37-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-30. (Effective through July 31, 2009 2011) Investment of fund.

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The commissioner may purchase a contract for reinsurance of any risk to be paid by the fund. The administrator may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

CHAPTER 250

SENATE BILL NO. 2380

(Senators Holmberg, Heitkamp, Schobinger)
(Representatives Delmore, Devlin, Price)

COMMUNITY HEALTH GRANT PROGRAM

AN ACT to provide for a community health grant program; to provide an appropriation; to provide a continuing appropriation; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Community health grant program.

1. The state department of health shall establish a community health grant program. The primary purpose of the program is to prevent or reduce tobacco usage in the state by strengthening community-based public health programs and by providing assistance to public health units and communities throughout the state. The program must build on and may not duplicate existing programs. Grants awarded under the program must be awarded on a noncompetitive basis using the per capita formula provided for in this subsection. The program must, to the extent funding is available, follow guidelines concerning tobacco prevention programs recommended by the centers for disease control and prevention. Entities awarded grants under the program may contract with or award grants to private providers that conduct tobacco cessation programs. Not more than five percent of the community health grant program funds may be expended for surveillance and evaluation activities. Funds appropriated for the program must be allocated as follows:
 - a. Forty percent of all funds appropriated for the program must be granted to a public health unit or to cooperating public health units that have an agreement with school boards concerning preventive health programs to be funded. The program must be developed with student participation and must include a plan to reduce student tobacco use.
 - b. Forty percent of all funds appropriated for the program must be granted to a public health unit or to cooperating public health units that have established a unitwide plan, developed in cooperation with local elected officials in the unit's jurisdiction, concerning the preventive health programs to be funded. The plan must address programs to reduce tobacco use by the residents living in the counties serviced by the units; however, the plan may include other chronic disease programs. In addition to any grants received under this subdivision, each county with a population of less than ten thousand must receive five thousand dollars per biennium to be used to implement the county's programs.
 - c. Twenty percent of all funds appropriated for the program must be granted to public health units to supplement existing state aid from

other sources. Each unit must receive one percent of the amount allocated under this subdivision for each county within the unit and the remaining amount must be distributed to each unit on a per capita basis.

2. The state department of health, in establishing the community health grant program, shall build upon the state's existing tobacco control grant program activities and shall follow the centers for disease control and prevention's best practices for comprehensive tobacco control programs. The department shall encourage applicants to monitor program accountability with respect to tobacco-related behaviors, attitudes, and health outcomes and to include in their plans:
 - a. Community programs that:
 - (1) Engage youth in the development and implementation of interventions;
 - (2) Develop partnerships with local organizations;
 - (3) Conduct educational programs at local levels;
 - (4) Promote government and voluntary health policies, such as clean indoor air, youth access, and treatment coverage;
 - (5) Restrict minors' access to tobacco; and
 - (6) Deter smoking in public places.
 - b. Promotion of school programs by partnering with public health organizations, school boards, education associations, and other organizations in each county to provide school programs that promote:
 - (1) Tobacco-free policies;
 - (2) Evidence-based curricula;
 - (3) Teacher training;
 - (4) Parental involvement; and
 - (5) Cessation services for students and staff.

SECTION 2. Community health grant program advisory committee - Duties of state health officer.

1. The state health officer shall establish a community health grant program advisory committee and shall appoint, after consulting with the governor, appropriate members to advise the state department of health in the development of a community health grant program. The state health officer, who shall be the chairman of the committee, shall appoint to the committee the state tobacco control administrator; one high school student; one student of a postsecondary institution in the state; one representative of a nongovernmental tobacco control organization;

and one law enforcement officer. In addition to the members appointed by the state health officer, the committee must include:

- a. One individual appointed by the North Dakota Indian affairs commission;
 - b. One individual appointed by the North Dakota public health association;
 - c. The superintendent of public instruction or the superintendent's designee;
 - d. An academic researcher with expertise in tobacco control and health promotion intervention, appointed by the dean of the university of North Dakota school of medicine and health sciences; and
 - e. One physician appointed by the North Dakota medical association.
2. Members of the committee who are not state employees or officers are entitled to be compensated at a rate of sixty-two dollars and fifty cents per day and are entitled to mileage and expenses as provided by law for state officers and employees. A state employee who is a member of the committee must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.
3. The state department of health, with the committee's involvement, shall provide assistance to:
 - a. Evaluate programs;
 - b. Promote media advocacy by working with statewide media associations;
 - c. Implement smoke-free policies by involving antitobacco groups in promoting the need for smoke-free public buildings;
 - d. Work to reduce minors' access to tobacco in all communities;
 - e. Facilitate the coordination of program components with the local level;
 - f. Involve state agencies, law enforcement, and local government in the administration and management of the program; and
 - g. Assist the state in screening and implementing the grants.
4. The state health officer shall monitor the implementation of the community health grant program. The state health officer shall provide reports to the legislative council regarding the implementation of the program not later than December 31, 2001, and November 1, 2002. Upon request, the state health officer shall provide assistance to any interim legislative committee that may study the implementation of the community health grant program and shall recommend any legislation that the community health grant program advisory committee considers appropriate to improve the community health grant program.

SECTION 3. Gifts, grants, and donations - Continuing appropriation. The state department of health and public health units may accept any gifts, grants, or donations, whether conditional or unconditional. The department of health or public health units may contract public or private entities and may expend any available moneys to obtain matching funds for the purposes of this Act. All moneys received by the state department of health as gifts, grants, or donations under this section are appropriated on a continuing basis to the state department of health.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the community health trust fund, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding the community health grant program advisory committee, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 5. APPROPRIATION. There is appropriated out of any moneys in the community health trust fund, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding grants to cities and counties on a dollar-for-dollar matching fund basis for city and county employee tobacco education and cessation programs, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 6. ALCOHOL, TOBACCO, AND DRUG ABUSE PROGRAMS - LEGISLATIVE COUNCIL STUDY. During the 2001-02 interim, the legislative council shall consider studying the programs that deal with the prevention and treatment of alcohol, tobacco, and drug abuse and other kinds of risk-associated behavior which are operated by various state agencies, including the department of corrections and rehabilitation, the attorney general, the state department of health, the department of human services, the department of public instruction, the department of transportation, the national guard, and the supreme court, and whether better coordination among the programs within those agencies may lead to a more effective and cost-efficient way of operating the programs and providing services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

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