

OCCUPATIONS AND PROFESSIONS

CHAPTER 363

HOUSE BILL NO. 1195

(Representative Klemin)

ABSTRACTER FEES

AN ACT to amend and reenact section 43-01-18 of the North Dakota Century Code, relating to fees charged by abstracters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-18 of the North Dakota Century Code is amended and reenacted as follows:

43-01-18. Fees chargeable by abstracter. An abstracter may charge no more than the following fees; ~~and no more~~ for making and certifying to an abstract:

1. For each entry on an abstract or continuation thereof, ~~five~~ six dollars.
2. For a complete certification covering the records of the several county offices, ~~sixty~~ seventy-five dollars.
3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title an additional fee of nine dollars, for each quarter section [64.75 hectares] or portion thereof in excess of one, may be charged.
4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, an additional fee of nine dollars, for ~~such~~ the premises in each additional block in excess of one, may be charged.
5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax liens, mechanics' liens and mechanics' lien notices, three dollars and fees charged to the abstractor by governmental agencies or governmental entities.
6. For all miscellaneous instruments, two dollars for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.
7. ~~Such~~ The fees as may be fixed by special statute.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 364

HOUSE BILL NO. 1262

(Representatives Porter, Brusegaard, Delzer, Devlin)
(Senators Andrist, Cook)

BOARD OF PODIATRIC MEDICINE AND DISCIPLINARY PROCEEDINGS

AN ACT to create and enact a new section to chapter 43-05 of the North Dakota Century Code, relating to the cost of disciplinary proceedings undertaken by the state board of podiatric medicine; and to amend and reenact section 43-05-03 of the North Dakota Century Code, relating to the state board of podiatric medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-05-03 of the North Dakota Century Code is amended and reenacted as follows:

43-05-03. Board of podiatric medicine - Appointment of members - Term of office - Qualifications - Vacancies - Duties - Quorum - Records. The board of podiatric medicine consists of ~~five~~ six persons appointed by the governor for a term of four years each with the terms of office so arranged that ~~one term only expires~~ no more than two terms expire on the thirteenth day of June of ~~each~~ any year. A member of the board may not serve for more than two successive terms. A member may not be reappointed to the board after serving two successive terms unless at least two years have elapsed since the member last served on the board. Four members of the board must hold doctor of podiatric medicine degrees and must have practiced podiatric medicine in this state for at least two years before their appointment, ~~and the fifth person~~ one member must be a doctor of medicine, who holds a doctor of medicine degree and has practiced in this state for at least two years before the appointment, and one member, who is designated as a public member, must be a resident of this state, be at least twenty-one years of age, and may not be affiliated with any group or profession that provides or regulates health care in any form.

A member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until a successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term. The board may employ and compensate attorneys, investigative staff, clerical assistants, or others to assist in the performance of the duties of the board.

A majority of the board constitutes a quorum to transact business, make any determination, or take any action. The board shall keep a record of its proceedings and of applications for licenses. Applications and records must be preserved for at least six years beyond the disposition of the application or record or the last annual registration of the licensee, whichever is longer.

SECTION 2. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a podiatrist, the board may direct the podiatrist to pay the board a sum not to exceed the reasonable and actual costs, including attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the podiatrist's license may be suspended until the costs are paid to the board.

Approved April 3, 2001

Filed April 3, 2001

CHAPTER 365

HOUSE BILL NO. 1377

(Representatives Keiser, Berg, M. Klein)

BOARD OF PODIATRIC MEDICINE BORROWING

AN ACT to create and enact a new section to chapter 43-05 of the North Dakota Century Code, relating to the authority of the board of podiatric medicine to borrow funds; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Loan for litigation expenses. Subject to approval by the emergency commission, the board may borrow funds sufficient to pay for attorneys' fees and costs incurred in investigations, administrative proceedings, and litigation resulting from the board performing its duties. Notwithstanding section 43-05-15, the board may establish an annual renewal license fee for each year following the issuance of a loan under this section, and the fee must be maintained until the loan is fully repaid, including any accrued interest. The amount of the annual renewal license fee assessed under this section may not exceed one thousand dollars. Once the loan is paid in full, the annual renewal license fee must revert to the amount established by the board before the issuance of the loan. The notice of a proposed rule to assess the fee in this section or revert to the previous license fee may be sent by certified mail to each individual licensed by the board in lieu of the publication requirements for the notice in chapter 28-32.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 2001-02 interim the ability of occupational and professional boards with less than one hundred licensees to process disciplinary complaints and carry out other statutory responsibilities. The study should address procedures used by boards to respond to disciplinary complaints and initiate disciplinary actions, the boards' ability to pay for the cost of disciplinary actions, and the legal services and staff services available to assist boards with the processing of disciplinary complaints and the performance of other statutory responsibilities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 366

HOUSE BILL NO. 1138

(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

CONTRACTOR LICENSES

AN ACT to amend and reenact section 43-07-04 of the North Dakota Century Code, relating to contractor licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. No sooner than twenty days after sending written notice to a contractor at the contractor's last known address, the registrar shall ~~use procedures of chapter 28-32 to revoke~~ classify as not in good standing the license of any contractor who fails to:

1. Maintain liability insurance coverage required by this section or by section 43-07-10;
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
3. Maintain an active status of a corporation or registration as a foreign corporation;
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. File or renew a trade name registration as required by chapter 47-25;
6. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. File or renew a limited partnership or foreign limited partnership.

Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering into new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters into new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 367

HOUSE BILL NO. 1424

(Representatives Koppelman, Carlson, Kasper, B. Thoreson)
(Senators Krebsbach, D. Mathern)

CONTRACTOR LICENSE RENEWAL

AN ACT to amend and reenact section 43-07-10 of the North Dakota Century Code, relating to licensing of contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - Invalidity of license for failure to renew. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of ~~ten~~ twenty-five thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must

be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

Approved March 26, 2001

Filed March 26, 2001

CHAPTER 368

HOUSE BILL NO. 1126

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

PRE-NEED FUNERAL CONTRACT PAYMENT DEPOSIT

AN ACT to create and enact section 43-10.1-03.1 of the North Dakota Century Code, relating to pre-need funeral contracts; to amend and reenact sections 43-10.1-01, 43-10.1-03, 43-10.1-04, 43-10.1-05, and 43-10.1-07.1 of the North Dakota Century Code, relating to pre-need funeral contracts; and to repeal section 23-06-03.1 of the North Dakota Century Code, relating to pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-01. Definitions. As used in this chapter:

1. "Cemetery association" means any person, corporation, municipality, association, or organization owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies.
2. "Cemetery merchandise" means all service or property to be used in funeral services or burials other than "professional service or personal property to be used in funeral services" ~~as defined in subsection 3.~~
3. "Commissioner" means the securities commissioner.
4. ~~5.~~ 4. "Licensed funeral establishment" means a funeral establishment as defined and licensed in accordance with sections 43-10-21 and 43-10-22.
5. ~~6.~~ 5. "Person" means any natural person, firm, association, corporation, limited liability company, or agents or employees thereof.
6. ~~7.~~ 6. "Pre-need funeral service contract" means any contract, other than an insurance contract, under which for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish professional service or personal property to be used in funeral services, or to furnish cemetery merchandise.
7. ~~8.~~ 7. "Professional service or personal property to be used in funeral services" means all personal property, services, supplies, and equipment normally performed or furnished by a licensed embalmer, a licensed funeral establishment, or a cemetery association including any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques, and all other articles of merchandise incident to a funeral service, but excluding any outside interment receptacles into which any inside receptacle or

container will be placed, grave lots, grave spaces, grave markers, monuments, tombstones, crypts, niches, and mausoleums unless these items are sold by a companion agreement or in contemplation of a trade or barter which includes the sale or rental of any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques, or other articles of merchandise incident to a funeral service.

SECTION 2. AMENDMENT. Section 43-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-03. Annual report filed with ~~securities~~ commissioner. On or before January thirty-first of each year, the owner or manager of each cemetery association or licensed funeral establishment that has entered into any pre-need funeral service contracts during the preceding calendar year shall file a report covering the period of the preceding calendar year with the ~~securities~~ commissioner, which report must include:

1. The name and address of the licensed funeral establishment or cemetery association and the name and address of the manager or operator thereof.
2. The name of the purchaser and beneficiary of each pre-need funeral service contract entered into on behalf of the licensed funeral establishment or cemetery association during the preceding calendar year and the date each contract was made.
3. The lump-sum consideration paid upon such pre-need funeral service contract required to be reported under subsection 2 or the total amount in dollars of any installments paid upon each pre-need funeral service contract required to be reported under subsection 2.
4. The name and address of the bank, credit union, savings and loan association, or trust company in which such consideration was deposited in accordance with section ~~23-06-03.1~~ 43-10.1-03.1.
5. The total in dollars of all sums received as consideration upon pre-need funeral service contracts executed by the licensed funeral establishment or cemetery association or in its behalf during all periods after July 1, 1973, which are undrawn or unexpended and on deposit in a bank, credit union, savings and loan association, or trust company or in the hands of the licensed funeral establishment or cemetery association.
6. Such other information as may reasonably be required by the ~~securities~~ commissioner for the purpose of the proper administration of this chapter.

Such report must be accompanied by a filing fee of fifteen dollars and is a public record.

¹⁸¹ **SECTION 3.** Section 43-10.1-03.1 of the North Dakota Century Code is created and enacted as follows:

43-10.1-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage. Whenever payments are made to a person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

SECTION 4. AMENDMENT. Section 43-10.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-04. Bond. ~~The~~ Each owner or operator of a licensed funeral establishment or cemetery association ~~shall, at the time of filing the annual report required in section 43-10.1-03,~~ who files an annual report, must file with the ~~securities~~ commissioner a corporate surety bond approved by the ~~securities~~ commissioner in an amount deemed adequate by the ~~securities~~ commissioner

¹⁸¹ Section 43-10.1-03.1 was amended by section 2 of Senate Bill No. 2314, chapter 370.

running to the state of North Dakota. The bond must be ~~payable to the state of North Dakota,~~ and in such form and style as the ~~securities~~ commissioner may require for the use and benefit of the purchasers or persons making payments upon pre-need funeral service contracts or their estates, or the beneficiary of the pre-need funeral service contract or his estate for damages suffered by them because of the failure to comply with all provisions of the pre-need funeral service contract or the provisions of this chapter.

SECTION 5. AMENDMENT. Section 43-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-05. Verification by ~~securities~~ commissioner. Within ninety days after the filing of a report as required by section 43-10.1-03, the ~~securities~~ commissioner shall verify such report by mailing to the banks, credit unions, savings and loan associations, or trust companies where the report indicates the consideration has been deposited, a questionnaire which the bank, credit union, savings and loan association, or trust company is requested to complete and return, verifying the facts stated in the report in regard to the contract or the deposit of funds. The ~~securities~~ commissioner shall verify the facts on additional contracts reported if the commissioner has reason to believe additional verification to be necessary.

SECTION 6. AMENDMENT. Section 43-10.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-07.1. Administration. The ~~securities~~ commissioner has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the ~~securities~~ commissioner has additional powers as set forth in this chapter.

SECTION 7. REPEAL. Section 23-06-03.1 of the North Dakota Century Code is repealed.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 369

SENATE BILL NO. 2443

(Senators O'Connell, Kroeplin, Schobinger)
(Representatives Hunskor, S. Kelsh, Kerzman)

PRE-NEED FUNERAL CONTRACTS

AN ACT to amend and reenact sections 23-06-03 and 43-10.1-02 of the North Dakota Century Code, relating to pre-need funeral service contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06-03. Duty of burial.

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

4. A person with the duty of burial under this section, or the personal representative of the decedent's estate, if any, shall honor, to the extent reasonable and possible, any pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract.

SECTION 2. AMENDMENT. Section 43-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-02. Pre-need funeral service contracts. ~~No~~ A person may ~~not~~ engage in the sale or execution of a pre-need funeral service contract unless ~~such~~ that person is the operator, agent, employee, or manager of a licensed funeral establishment, a or cemetery association, or an agent or employee of such operator, manager, establishment, or association. As part of the sale of a pre-need funeral service contract, the seller shall inform the purchaser of the extent to which the person with the duty of burial under section 23-06-03 might be bound by any pre-need funeral arrangements.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 370

SENATE BILL NO. 2314

(Senators Stenehjem, Bowman, Dever)
(Representatives Nelson, Weiler)

PRE-NEED FUNERAL CONTRACT IRREVOCABILITY

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, or in the alternative to amend and reenact section 43-10.1-03.1 of the North Dakota Century Code as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, relating to pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1126 does not become effective, section 23-06-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, ~~prior to~~ before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral

establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

Any person who willfully violates this section or any rule or order of the commissioner under this section is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense does not bar a prosecution or conviction for any other offense.

¹⁸² **SECTION 2. AMENDMENT.** If House Bill No. 1126 becomes effective, section 43-10.1-03.1 of the North Dakota Century Code, as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

43-10.1-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the

¹⁸² Section 43-10.1-03.1 was created by section 3 of House Bill No. 1126, chapter 368.

payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 371

SENATE BILL NO. 2371

(Senators Espegard, Lee)
(Representatives Kasper, Nottestad)

COSMETOLOGY PRACTICE AND INSTRUCTION

AN ACT to amend and reenact sections 43-11-01, 43-11-16, and subdivisions b and c of subsection 1 of section 43-11-27 of the North Dakota Century Code, relating to skin care, cosmetology schools, and cosmetology instructors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-01. Definitions. In this chapter, unless the context or subject matter ~~thereof~~ otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually ~~heretofore and hereafter~~ performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding ~~him or herself~~ oneself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology is ~~defined and includes, but otherwise is not limited thereby,~~ the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
3. "Cosmetology salon" includes that part of any building ~~wherein~~ in which the occupation of a cosmetologist is practiced.
4. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.
5. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
6. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who

has met the requirements of section 43-11-27 and has applied for and received an instructor's license.

7. "Invasive care" means any procedure that invades the live tissue of the dermis, including:
 - a. Laser use, except the use of cold laser technology using nonlinear, pulsed light application for the purpose of biostimulation without the generation of heat; and
 - b. Chemical peels, except for chemical peels using:
 - (1) Thirty percent alpha hydroxy acid, which includes glycolic acid with a pH of 3.0 or higher;
 - (2) Twenty percent beta hydroxy acid, which includes salicylic acid with a pH of 3.0 or higher; or
 - (3) Two percent resorcinol with a pH of 3.0 or higher.
- ~~8.~~ 9. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- ~~8.~~ 9. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
- ~~9.~~ 10. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~40.~~ 11. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
- ~~44.~~ 12. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
- ~~42.~~ 13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person. The term does not include invasive care.
- ~~43.~~ 14. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
- ~~44.~~ 15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
- ~~45.~~ 16. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

SECTION 2. AMENDMENT. Section 43-11-16 of the North Dakota Century Code is amended and reenacted as follows:

43-11-16. Schools of cosmetology - Qualifications for licensure. A license must be granted to a school of cosmetology upon an application to the board and the payment of the annual license fee, if the school:

1. Is operated and maintained in premises separate from any cosmetology salon;
2. Requires one thousand eight hundred hours of training and instruction in cosmetology, six hundred hours of training and instruction in esthetics, or three hundred fifty hours of training and instruction in manicure, not to exceed eight hours per day;
3. Employs at least two full-time licensed instructors for the first twenty-five students enrolled and one additional instructor for each additional twenty-five students enrolled or fraction thereof after the school's enrollment has reached fifty students, except a school that provides training and instruction limited to esthetics or manicure shall employ at least one full-time instructor for the first twelve students enrolled and one additional instructor for each additional twelve students enrolled or fraction thereof;
4. Possesses apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum;
5. Maintains a record of the attendance and performance of each student;
6. Maintains regular class and instruction hours to include practical demonstrations and theoretical studies supplemented by audiovisual aids, and studies in sanitation, sterilization, and other safety measures and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to cosmetology;
7. Agrees not to:
 - a. Conduct a clinical department for fees after licensure by the board, until the school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter;
 - b. Permit any student to practice on any person not an instructor or registered student of the school until the student has completed at least twenty percent of the total hours of instruction required by this chapter;
 - c. Compensate any of its basic students in any way; and
8. At the time of application for licensure and upon the renewal of a license, furnishes to the board, and maintains in force at all times the license is in effect, a bond in the penal sum of ten thousand dollars. The bond must run in favor of the board, as agent of the state, and must be furnished by a surety company authorized to do business in this state. It must be conditioned upon the bonded school's providing its registered students with the full course of instruction required under this chapter

and must provide for a refund of a proportionate amount of each student's tuition fee upon default.

Any school that enrolls student instructors shall set up an adequate course of training, with the approval of the board, and may not have at any one time more than ~~one~~ two student ~~instructor~~ instructors for each licensed instructor actively engaged in the school.

SECTION 3. AMENDMENT. Subdivisions b and c of subsection 1 of section 43-11-27 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- b. Shall ~~have at least one year's experience as an active practicing cosmetologist~~ possess a current North Dakota license as a cosmetologist and must have been actively engaged in the practice of cosmetology for at least one year before application for an instructor's license, supplemented by not less than four hundred eighty hours instructor's training in cosmetology in a school of cosmetology. In no event may more than six hundred hours instructor's training be requisite for admission for examination under this subdivision or course of training approved by the board; or
- c. Shall possess a current North Dakota license as a cosmetologist and shall have been actively engaged in the practice of cosmetology for at least three years prior to application for an instructor's license supplemented by not less than one hundred sixty hours instructor's training in ~~cosmetology in a school of cosmetology~~ or course of training approved by the board. In no event may more than six hundred hours instructor's training be requisite for admission for examination under this subdivision. No instructor or student instructor may be permitted to practice cosmetology on a patron other than that part of practical work which pertains directly to the teaching of practical operations to students.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 372

SENATE BILL NO. 2114

(Industry, Business and Labor Committee)

(At the request of the Board of Nursing)

NURSING PRACTICE

AN ACT to amend and reenact sections 43-12.1-02, 43-12.1-03, 43-12.1-04, 43-12.1-05, 43-12.1-07, 43-12.1-08, 43-12.1-09, 43-12.1-10, 43-12.1-11, 43-12.1-13, 43-12.1-14, 43-12.1-15, and 43-12.1-16 of the North Dakota Century Code, relating to specialty nursing practice, unlicensed assistive personnel, persons exempt from licensure, residency requirements for nursing practice, compensation of board members, disciplinary procedures, and the expiration date of the authority of a licensed nurse to delegate medication administration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Advanced practice registered nurse" means a person who holds a current license to practice in this state as an advanced practice registered nurse and either has a graduate degree with a nursing focus or has completed the educational requirements in effect when the person was initially licensed.
2. "Board" means the North Dakota board of nursing.
3. "Licensed practical nurse" means a person who holds a current license to practice in this state as a licensed practical nurse and either has an associate degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed.
4. "Nurse" means any person currently licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse.
5. ~~"Nurse assistant" means a person who is authorized by the board to perform nursing tasks delegated and supervised by a licensed nurse.~~
6. "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. Nursing includes the following acts, which may not be deemed to include acts of medical diagnosis or treatment or the practice of medicine as defined in chapter 43-17:
 - a. The maintenance of health and prevention of illness.

- b. Diagnosing human responses to actual or potential health problems.
 - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding and referral of persons who are ill, injured, or experiencing changes in the normal health processes.
 - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
 - e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of the health care regimen prescribed by a health care practitioner licensed under title 43.
- ~~7.~~ 6. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.
- ~~8.~~ 7. "Registered nurse" means a person who holds a current license to practice in this state as a registered nurse and either has a baccalaureate degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed.
8. "Specialty practice registered nurse" means a person who holds a current license to practice in this state as a specialty practice registered nurse and has the educational preparation and national certification within a defined area of nursing practice.
9. "Transitional practical nurse license" means a license issued by the board to a person who meets all of the requirements for licensure by endorsement as a licensed practical nurse, except the educational requirements.
10. "Transitional registered nurse license" means a license issued by the board to a person who meets all of the requirements for licensure by endorsement as a registered nurse, except the educational requirements.
11. "Unlicensed assistive person" means an assistant to the nurse who regardless of title is authorized by the board to perform nursing interventions delegated and supervised by a licensed nurse.

SECTION 2. AMENDMENT. Section 43-12.1-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-03. License required - Title - Abbreviation. Any person who provides nursing care to a resident of this state must hold a current license or registration issued by the board. It is unlawful for a person to practice nursing, offer to practice nursing, assist in the practice of nursing, or use any title, abbreviation, or designation to indicate that the person is practicing nursing or assisting in the practice of nursing in this state unless that person is currently licensed or registered under this chapter. A currently licensed advanced practice registered nurse or specialty practice registered nurse may use titles approved by the board; a currently

licensed registered nurse may use the abbreviation "R.N."; a currently licensed practical nurse may use the abbreviation "L.P.N."; and ~~a nurse assistant~~ an unlicensed assistive person with current registration may use the title identified by the employer. A person may not use the title "nurse" or be referred to as a "nurse" unless licensed by the board.

SECTION 3. AMENDMENT. Section 43-12.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-04. (Effective through July 31, 2001) Persons exempt from provisions of chapter. This chapter does not apply to:

1. Persons who perform nursing ~~tasks~~ interventions in cases of emergency or disaster.
2. Students practicing nursing as a part of a board-approved nursing education program.
3. Legally licensed nurses of another state employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. A person who performs nursing tasks for a family member.
7. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person who provides medication administration according to individual needs and as a part of an individual habilitation or case plan within a residential treatment center for children licensed under chapter 25-03.2, a treatment or care center for developmentally disabled persons licensed under chapter 25-16, or a residential child care facility licensed under chapter 50-11.

(Effective after July 31, 2001) Persons exempt from provisions of chapter. This chapter does not apply to:

1. Persons who perform nursing ~~tasks~~ interventions in cases of emergency or disaster.
2. Students practicing nursing as a part of a board-approved nursing education program.
3. Legally licensed nurses of another state employed in this state by the United States government or any of its bureaus, divisions, or agencies.

4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. A person who performs nursing tasks for a family member.
7. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person who provides medications, other than by the parenteral route:
 - a. Within residential treatment centers for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
 - b. Within treatment or care centers for developmentally disabled persons licensed under chapter 25-16;
 - c. Within group homes, residential child care facilities, and adult foster care facilities licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16; or
 - d. Within human service centers licensed under chapter 50-06.
10. A nurse currently licensed to practice nursing by another jurisdiction:
 - a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;
 - b. Who serves as a guest lecturer or short-term consultant; or
 - c. Who provides evaluation undertaken on behalf of an accrediting organization.

SECTION 4. AMENDMENT. Section 43-12.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-05. Board of nursing - Composition - Term of office. There is a state board of nursing whose members must be appointed by the governor which must consist of five registered nurses, three licensed practical nurses, and one public member. Each board member must be appointed for a term of four years. No appointee may be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. Terms of nurse board members must be evenly distributed to allow two licensed nurse board members to be appointed or reappointed each year. ~~The members of the board holding office on August 1, 1995, may continue to serve as members for their respective terms.~~

SECTION 5. AMENDMENT. Section 43-12.1-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-07. Compensation of board members. ~~In addition to the expenses incurred while engaged in the performance of the duties of office, each board member shall receive a per diem fee not to exceed ninety dollars for each day of service.~~ A member of the board is entitled to receive compensation in an amount fixed by the board for each day or portion of a day the member is actually engaged in the performance of official duties and such mileage reimbursement as is provided for in section 54-06-09. In addition, the member is entitled to reimbursement for actual and necessary expenses in the amounts provided by law for state officers in section 44-08-04. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

SECTION 6. AMENDMENT. Section 43-12.1-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-08. Powers and duties of the board. The board shall regulate the practice of nursing to assure that qualified competent practitioners and high quality standards are available. Regulation of the profession of nursing must ensure that no person may practice or offer to practice nursing or use titles of advanced practice registered nurse, specialty practice registered nurse, registered nurse, licensed practical nurse, ~~nurse assistant~~ or unlicensed assistive person, or titles of a similar nature which denote the practice of nursing to the general public unless licensed or registered as provided in this chapter. The board shall:

1. Enforce the provisions of this chapter. The board has all of the duties, powers, and authority specifically granted by and necessary for the enforcement of this chapter.
2. Adopt rules necessary to administer this chapter.
3. Appoint and employ a qualified registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
4. Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.
5. Establish qualifications for nursing licensure and registration.
6. Establish standards for nursing education and practice and:
 - a. Collaborate and consult with the appropriate nursing organizations and other affected parties in the establishment of the standards; and
 - b. Consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses. Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse and include evidence of a collaborative agreement with a licensed physician.
7. Periodically review and approve nursing education programs.

8. License and register applicants and renew and reinstate licenses and registrations.
9. Establish standards for assessing the competence of licensees and registrants continuing in or returning to practice.
10. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.
11. Issue limited licenses to individuals requiring accommodation to practice nursing.
12. Establish confidential programs for the rehabilitation of nurses with workplace impairments.
13. Discipline applicants, licensees, and registrants for violating this chapter.
14. Establish a nursing student loan program funded by license fees to encourage persons to enter and advance in the nursing profession.
15. Establish a registry of persons licensed or registered by the board.
16. Collaborate and consult with the North Dakota nurses association, North Dakota licensed practical nurses association, and other nursing specialty groups prior to the adoption of rules.
17. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
18. Conduct and support projects pertaining to nursing education and practice.
19. Notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of advanced practice registered nurses authorized to write prescriptions.
20. Adopt rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.

SECTION 7. AMENDMENT. Section 43-12.1-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09. Licensure - Registration. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:

1. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
 - a. Submit a completed application and appropriate fee as established by the board;
 - b. Submit an official transcript showing completion of a board-approved nursing education program preparing for the level of licensure sought; and

- c. Pass an examination approved by the board.
2. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:
 - a. Submit a completed application and appropriate fee as established by the board;
 - b. Submit an official transcript showing completion of a nursing education program equal to or exceeding the requirements for nursing education programs in place in this state at the time the applicant qualified for initial licensure;
 - c. Submit proof of initial licensure by examination with the examination meeting the state requirements for licensure examinations in effect at the time the applicant qualified for initial licensure; and
 - d. Submit evidence of current unencumbered licensure in another state or territory or meet continued competency requirements as established by the board.
3. If an applicant for licensure by endorsement does not meet the educational requirements for the appropriate level of licensure as established by the board, a transitional license may be issued. A transitional license may be issued and renewed according to board rules. Renewal requires proof of progression towards meeting the ~~educational~~ academic requirements or thirty hours of continuing education.
4. An applicant for licensure as an advanced practice registered nurse shall:
 - a. Submit a completed application and appropriate fee as established by the board;
 - b. Submit evidence of appropriate education and current certification in an advanced nursing role by a national nursing organization meeting criteria as established by the board; and
 - c. Possess or show evidence of application for a current unencumbered registered nurse license.
5. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state before January 1, 2001, or who completed an advanced nursing education program and was licensed or certified as a women's health care nurse practitioner by another state before January 1, 2007, may apply for and receive an advanced practice license if that person meets the requirements that were in place in this state at the time the applicant qualified for initial advanced practice licensure in that state.
6. An applicant for ~~nurse assistant~~ unlicensed assistive person registration shall:

- a. Submit a completed application and the appropriate fee as established by the board; and
 - b. Provide verification of appropriate training ~~and~~, evidence of certification or evaluation in the performance of basic nursing ~~tasks~~ interventions.
7. An applicant for licensure as a specialty practice registered nurse shall:
 - a. Submit a completed application and appropriate fees as established by the board;
 - b. Submit evidence of appropriate education and current certification in a specialty nursing role by a national nursing organization meeting criteria as established by the board; and
 - c. Possess or show evidence of application for a current unencumbered registered nurse license.

SECTION 8. AMENDMENT. Section 43-12.1-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-10. License - Registration - Renewal.

1. A current license to practice as an advanced practice registered nurse, specialty practice registered nurse, registered nurse, or licensed practical nurse must be issued upon proof that the applicant meets all requirements for licensure ~~and is a resident of North Dakota or upon verification of employment in North Dakota or by a federal agency~~. If a person does not renew a license before its expiration date, the license may be reinstated if that person meets the requirements set by the board.
2. ~~A nurse assistant~~ An unlicensed assistive person may renew registration upon submission of a renewal application, appropriate fee established by the board and documentation of competency by the employer or evidence of certification or evaluation. ~~A lapsed nurse assistant~~ unlicensed assistive person registration may be renewed upon submission of the application, payment of the appropriate fee established by the board, and documentation of competency or evidence of certification or evaluation.

SECTION 9. AMENDMENT. Section 43-12.1-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-11. Duties of licensees and registrants. Each person licensed or registered by the board shall provide information requested by the board at the time of renewal. Each person licensed or registered by the board shall report to the board any knowledge of the performance by others of those acts or omissions that are violations of this chapter or grounds for disciplinary action as set forth in section 43-12.1-14. Each ~~licensed nurse~~ licensee or registrant shall report to the board any judgment or settlement in a professional or occupational malpractice action to which the licensee or registrant is a party. Any person, other than a licensee or registrant alleged to have violated this chapter, participating in good faith in making a report, assisting in an investigation, or furnishing information to an investigator, is immune from any civil or criminal liability that otherwise may result from reporting required by

this section. For the purpose of any civil or criminal proceeding the good faith of any person required to report under this section is presumed.

SECTION 10. AMENDMENT. Section 43-12.1-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-13. Disciplinary proceedings. Disciplinary proceedings under this chapter must be conducted in accordance with chapter 28-32. Fees of ~~up to one thousand dollars for each separate violation~~ or the assessment of costs and disbursements, or both, may be imposed against a respondent in addition to any licensure or registration sanctions the board may impose. An appeal from the final decision of the board may be taken to the district court of Burleigh County under chapter 28-32. The board shall furnish to the boards of nursing of other states by means including the data bank of the national council of state boards of nursing, to data banks as required by federal law and to health care agencies of this state, a list of the names and addresses of licensees or registrants who have been disciplined by the board.

SECTION 11. AMENDMENT. Section 43-12.1-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-14. Grounds for discipline - Penalties. The board may ~~suspend, revoke, place on probation, refuse to issue or renew a license, or reprimand a licensee or registrant if the licensee or registrant~~ deny, limit, revoke, encumber, or suspend any license or registration to practice nursing issued by the board or applied for in accordance with this chapter; reprimand, place on probation, or otherwise discipline a licensee, registrant, or applicant; deny admission to licensure or registration examination; provide an alternative to discipline in situations involving impairments of chemical dependency or psychiatric or physical disorders; or require evidence of evaluation and treatment, upon proof that the person:

1. Has been arrested, charged, or convicted by a court, or has entered a plea of nolo contendere to a crime in any jurisdiction that relates adversely to the practice of nursing and the licensee or registrant has not demonstrated sufficient rehabilitation under section 12.1-33-02.1;
2. Has been disciplined by a board of nursing in another jurisdiction, or has had a license or registration to practice nursing or to assist in the practice of nursing or to practice in another health care occupation or profession denied, revoked, suspended, or otherwise ~~restricted~~ sanctioned;
3. Has engaged in any practice inconsistent with the standards of nursing practice;
4. Has obtained or attempted to obtain by fraud or deceit a license or registration to practice nursing, or has submitted to the board any information that is fraudulent, deceitful, or false;
5. ~~Is unfit or incompetent to practice nursing by reason of negligence, patterns of behavior, or other causes as established under rules adopted by the board~~ Has engaged in a pattern of practice or other behavior that demonstrates professional misconduct;
6. Has diverted or attempted to divert supplies, equipment, drugs or controlled substances for personal use or unauthorized use;

7. Has practiced nursing in this state without a current license or as otherwise prohibited by this chapter;
8. Has failed to report any violation of this chapter or rules adopted under this chapter; or
9. Has failed to ~~meet the duties of a licensee or registrant under this chapter~~ observe and follow the duly adopted standards, policies, directives, and orders of the board, or has violated any other provision of this chapter.

SECTION 12. AMENDMENT. Section 43-12.1-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-15. Violation - Penalties. A person may not:

1. Buy or sell, fraudulently obtain, or furnish any questions and answers used in the licensing examination for nurses, or assist others in the performance of these acts.
2. Buy or sell, fraudulently obtain, or furnish any record which might enable a person to obtain a license in this state or assist others in the performance of these acts.
3. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, or a licensed practical nurse through use of a transcript from a school of nursing, diploma, certificate of registration, license, or record which was fraudulently created or obtained.
4. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, or a licensed practical nurse as defined by this chapter unless licensed to do so.
5. Conduct any education program preparing a person for nursing licensure or registration unless the program has been approved or accepted by the board.
6. Employ a person to practice nursing or perform nursing ~~tasks~~ interventions unless the person is licensed or registered by the board.

Any violation of this chapter is a class B misdemeanor.

SECTION 13. AMENDMENT. Section 43-12.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-16. (~~Effective through July 31, 2001~~) Delegation of medication administration. A licensed nurse may delegate medication administration to a person exempt under subsection 9 of section 43-12.1-04.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 373

HOUSE BILL NO. 1360

(Representatives Jensen, Gulleason, Keiser, F. Klein)
(Senators Kilzer, T. Mathern)

NURSING NEEDS STUDY

AN ACT to create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to a study of nursing needs; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Nursing needs study. The board may address issues of supply and demand for nurses, including issues of recruitment, retention, and utilization of nurses. The board:

1. May develop a strategic statewide plan to alleviate the nursing shortage in the state by establishing and maintaining a data base on nursing supply and demand in the state, including current supply and demand and future projections, and by selecting priorities from the plan to be addressed.
2. May convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to review and comment on data analysis prepared for the board; recommend systematic changes, including strategies for implementation of recommended changes; and evaluate and report the results of these efforts to the legislative assembly and the public.
3. May review and study the nursing educational requirements in this state.
4. May study the nursing shortage in this state and the implications for rural communities.
5. May increase any license or registration fees imposed by the board up to fifteen dollars to reimburse the board for actual expenses incurred under this section.
6. May apply for, solicit, accept, and expend any contribution, grant, or gift made available from public or private sources for the purpose of implementing this section.
7. Shall report annually on the progress of the study, if undertaken, to the legislative council and shall provide a final report to the sixtieth legislative assembly.

SECTION 2. EXPIRATION DATE. This Act is effective through September 30, 2006, and after that date is ineffective.

Approved April 3, 2001

Filed April 3, 2001

CHAPTER 374

SENATE BILL NO. 2199

(Senators Klein, D. Mathern)
(Representatives Delmore, R. Kelsch)

OPTOMETRIST GLAUCOMA TREATMENT

AN ACT to amend and reenact section 43-13-13.3 of the North Dakota Century Code, relating to optometrist treatment of primary open-angle glaucoma.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-13.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-13.3. Standard of care - When consultation with physician required.

1. An optometrist certified by the board in the use of pharmaceutical agents as provided in this chapter must be held to the same standard of care in the use of such agents as are physicians licensed by the state board of medical examiners.
2. Any optometrist authorized by the board to use pharmaceutical agents ~~must~~ shall consult with a physician duly licensed to practice medicine when any diseased or pathological conditions of the eye do not respond to treatment. The consultation must be documented in the patient's record.
3. ~~After initiating treatment for primary open-angle glaucoma, the therapeutically certified optometrist shall consult with a licensed ophthalmologist within seventy-two hours. A treatment plan for each individual patient must be cooperatively identified in accordance with the currently accepted standard of care. In treating and managing glaucoma, if no progress is achieved in realizing the selected range of pressure considered unlikely to cause further optic nerve damage or resulting in further visual field loss, a referral must be made to a licensed ophthalmologist without delay.~~

Approved March 15, 2001
Filed March 15, 2001

CHAPTER 375

SENATE BILL NO. 2350

(Senators Fischer, Flakoll, T. Mathern)
(Representatives Froelich, S. Kelsh, B. Thoreson)

PHARMACIST DRUG ADMINISTRATION

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to pharmacist administration of drugs; and to amend and reenact subsection 1 of section 43-15-01 of the North Dakota Century Code, relating to terms used by the board of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸³ **SECTION 1. AMENDMENT.** Subsection 1 of section 43-15-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Administration" means the direct application of a drug to the body of a patient.
 - a. The term includes ~~the~~:
 - (1) The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist when nursing service is not available; ;
 - (2) Immunization and vaccination by injection of an individual who is more than eighteen years of age, upon an order by a physician or nurse practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner; and
 - (3) Provision of drugs by subcutaneous, intradermal, and intramuscular injection to an individual who is more than eighteen years of age upon the order of a physician or nurse practitioner authorized to prescribe such a drug.
 - b. The term ~~excludes~~ does not include the regular ongoing delivery of a drug to the patient in a health care setting and other parenteral administration of a drug.

SECTION 2. A new section to chapter 43-15 of the North Dakota Century Code is created and enacted as follows:

Injection of drugs - Rules. Any pharmacist who administers drugs by injection must have a certificate of authority from the board. The authority to

¹⁸³ Section 43-15-01 was also amended by section 8 of House Bill No. 1096, chapter 213.

administer a drug by injection may not be delegated. The board shall adopt rules to establish educational and operational requirements for a pharmacist to obtain and maintain a certificate of authority to administer drugs by injection. Rules adopted by the board under this section must include:

1. Educational requirements of a minimum of twenty hours, which include, at a minimum:
 - a. Basic immunology, including the human immune response;
 - b. The mechanism of immunity, adverse effects, dose, and administration schedule of available vaccines and approved medication and immunization;
 - c. Current immunization guidelines and recommendations of the centers for disease control and prevention;
 - d. Management of adverse events, including identification, appropriate response, documentation, and reporting;
 - e. How to educate patients on the need for immunizations;
 - f. Physiology and techniques for subcutaneous, intradermal, and intramuscular injection; and
 - g. Recordkeeping requirements established by law, rule, and regulation or established standards of care.
2. A requirement that an authorized pharmacist must obtain and maintain current certification in cardiopulmonary resuscitation or basic cardiac life support.
3. Requirements to maintain continuing competency with completion of a minimum of six hours of education dedicated to this area of practice every two years.
4. Requirements for content of physician orders and protocols.
5. Requirements relating to the reporting of the administration by injection to a patient's primary health care provider and to the state department of health.
6. Requirements relating to environments in which injections may be administered.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 376

SENATE BILL NO. 2140

(Industry, Business and Labor Committee)
(At the request of the State Board of Pharmacy)

PHARMACIST PRESCRIPTIVE PRACTICE

AN ACT to amend and reenact subsection 1 of section 43-15-31.4 of the North Dakota Century Code, relating to limited prescriptive practices of pharmacists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-15-31.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A licensed pharmacist in an institutional setting has limited prescriptive practices to initiate or modify drug therapy following diagnosis and initial patient assessment by a licensed physician, under the supervision of the same licensed physician, in accordance with this section. An institutional setting, for the purpose of this section, is a hospital, a physician clinic, a skilled nursing facility, or a swing bed facility in which a patient's medical records are readily available to the licensed physician and the licensed pharmacist.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 377

SENATE BILL NO. 2141

(Industry, Business and Labor Committee)
(At the request of the State Board of Medical Examiners)

PHYSICIAN ASSISTANT PRESCRIPTIVE AUTHORITY

AN ACT to amend and reenact section 43-17-02.1 of the North Dakota Century Code, relating to prescriptive authority of physician assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.1. Physician assistant - Limitations on prescribing drugs. ~~A physician assistant may not prescribe medications except as an agent of the supervising physician. A physician assistant may prescribe medications, in the name of the supervising physician if the authority has been assigned by the as~~ delegated to do so by a supervising physician. This may include schedule III through V controlled substances; however, a physician assistant may not prescribe schedule II controlled substances. The prescription container label must bear the name of the supervising physician and may also bear the name of the physician assistant. Appropriate medical records must be maintained. The state board of medical examiners shall notify the board of pharmacy in writing annually, or more frequently if required by changes, of each physician assistant who is authorized as an agent of a supervising physician to prescribe medications. A physician assistant who is a delegated prescriber of controlled substances must register with the federal drug enforcement administration.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 378

SENATE BILL NO. 2163

(Industry, Business and Labor Committee)
(At the request of the State Board of Medical Examiners)

BOARD OF MEDICAL EXAMINERS ORDERS AND INVESTIGATIONS

AN ACT to amend and reenact section 23-34-04, subsection 9 of section 43-17-31, sections 43-17-31.1, 43-17-32.1, subsection 1 of section 43-17.1-02, subsection 1 of section 43-17.1-05, and subsection 3 of section 43-17.1-06 of the North Dakota Century Code, relating to references to commission on medical competency, ex parte temporary suspension orders issued by the state board of medical examiners, and investigative panels of the state board of medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-34-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-34-04. Peer review committee - Mandatory reports. A peer review committee shall report to ~~the commission on~~ an investigative panel of the board of medical competency examiners any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer review committee fails to make any report required by this section.

SECTION 2. AMENDMENT. Subsection 9 of section 43-17-31 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or ~~the commission on medical competency~~ its investigative panels.

SECTION 3. AMENDMENT. Section 43-17-31.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-31.1. Costs of prosecution - Disciplinary proceedings. In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a physician, the board may direct any physician to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and the commission on medical competency its investigative panels in the investigation and prosecution of the case. When applicable, the physician's license may be suspended until the costs are paid to the board. A physician may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the physician's license may be suspended for nonpayment.

¹⁸⁴ **SECTION 4. AMENDMENT.** Section 43-17-32.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. When, based on verified evidence, the board ~~has probable cause to believe that the suspension of a physician's license is required to reasonably protect the public from imminent or critical harm~~ determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physician would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physician, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the physician.
2. An ex parte temporary suspension remains in effect ~~for not more than sixty days, unless~~ until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall ~~set the date of a full hearing for suspension or revocation of the physician's license for~~ conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, shall be taken against the physician who is the subject of the ex parte suspension. That hearing must be held not later than sixty thirty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing. The physician is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 5. AMENDMENT. Subsection 1 of section 43-17.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁸⁴ Section 43-17-32.1 was also amended by section 2 of Senate Bill No. 2117, chapter 393.

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of five members of the board, ~~excluding the president~~. Four members of each panel must be physician members of the board. One member of each panel must be a public member of the board. ~~In addition, the~~ The president of the board shall serve on ~~both~~ neither investigative ~~panels~~ panel.

SECTION 6. AMENDMENT. Subsection 1 of section 43-17.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any person may make or refer written complaints to the investigative panels with reference to the acts, activities, or qualifications of any physician, physician assistant, or fluoroscopy technologist licensed to practice in this state, or to request that an investigative panel review the qualifications of any physician, physician assistant, or fluoroscopy technologist to continue to practice in this state. Any person who, in good faith, makes a report to the investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the investigative panel shall conduct the investigation as it deems necessary to ~~resolve the matter as it deems appropriate. The investigative panel shall determine whether a formal hearing should be held to~~ determine whether any physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by law. Upon completion of its investigation, the investigative panel shall make a finding that the investigation discloses that:
 - a. There is insufficient evidence to warrant further action;
 - b. The conduct of the physician, physician assistant, or fluoroscopy technologist does not warrant further proceedings but the investigative panel determines that possible errant conduct occurred that could lead to significant consequences if not corrected. In such a case, a confidential letter of concern may be sent to the physician, physician assistant, or fluoroscopy technologist; or
 - c. The conduct of the physician, physician assistant, or fluoroscopy technologist indicates that the physician, physician assistant, or fluoroscopy technologist may have committed any of the grounds for disciplinary action provided for by law and which warrants further proceedings.

SECTION 7. AMENDMENT. Subsection 3 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Require~~ Upon probable cause, require any physician, physician assistant, or fluoroscopy technologist under investigation to submit to a physical, psychiatric, or competency examination, or chemical dependency evaluation.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 379

HOUSE BILL NO. 1462

(Representatives N. Johnson, Porter, Svedjan)
(Senators Lee, T. Mathern)

INJURY REPORTING DUTY

AN ACT to amend and reenact section 43-17-41 of the North Dakota Century Code, relating to the duty to report injuries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-41 of the North Dakota Century Code is amended and reenacted as follows:

43-17-41. Duty of physicians and others to report injury - Penalty.

1. Any physician, physician assistant, or other medical or mental health professional, any individual licensed under chapter 43-12.1 who has under his charge or care or performs any professional services diagnosis or treatment for any person individual suffering from any wound, injury, or other physical trauma inflicted;
 - a. Inflicted by his the individual's own act or by the act of another by means of a knife, gun, or pistol, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or which he
 - b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the same wound, injury, or trauma to the sheriff or state's attorney of a law enforcement agency in the county in which such the care was rendered.
2. ~~2.~~ 3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense as defined in chapter 12.1-20 is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.
4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.

3. 5. Any ~~person~~ individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.
4. 6. Any ~~person~~ individual making or not making a report in good faith pursuant to this section is immune from liability for making ~~said~~ or not making a report.

Approved April 19, 2001

Filed April 19, 2001

CHAPTER 380

SENATE BILL NO. 2161

(Industry, Business and Labor Committee)
(At the request of the Board of Dental Examiners)

DENTAL REGISTRATION, LICENSURE, AND PRACTICE

AN ACT to amend and reenact section 43-20-02, subsection 2 of section 43-20-03, sections 43-20-06 and 43-20-07, subsection 1 of section 43-20-12, sections 43-20-12.1, 43-28-05, 43-28-12.2, 43-28-16, and 43-28-17, and subsection 1 of section 43-28-25 of the North Dakota Century Code, relating to dentists and dental hygienists registration, licensure, and practice.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-02 of the North Dakota Century Code is amended and reenacted as follows:

43-20-02. Dental hygienists - Qualifications - Examinations - Registration and license. Any person who is of good moral character, who is not already a licensed dental hygienist of this state, who is a graduate of an accredited high school or its equivalent, and who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, upon applying for a license and paying an amount determined by the state board of dental examiners, may be examined by the board, on the subjects considered essential by it for a dental hygienist. The examinations must be conducted by the board or by a designee of the board, or by a regional dental testing service in which the board participates, or by other national or regional dental testing services that the board recognizes. If the applicant, in the opinion of the board, successfully passes the examination, the applicant may be registered and licensed as a dental hygienist. Applicants who fail to pass a satisfactory initial examination may be reexamined upon payment of the fee determined by the board for each subsequent examination. ~~An applicant may not be allowed to take more than three examinations.~~ The board shall determine the number of times an applicant may be reexamined. However, if the applicant fails on three occasions to pass the examination given by the board or an equivalent examination under section 43-28-12.1, the applicant shall provide evidence of additional education as required by the board before applying for another examination in this state. Applicants for examination shall submit their credentials to the board at least thirty days before the examination date. The examination date must correspond to the date of examination for applicants for a license to practice dentistry in this state.

The state board of dental examiners may accept the results of the national board examination as the equivalent to the testing of an applicant by the board in all areas covered by the national board examination.

SECTION 2. AMENDMENT. Subsection 2 of section 43-20-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The patient is being treated at the primary or satellite practice location of the supervising dentist, a public health setting, a hospital, a long-term care facility, or in an institutional type setting;

SECTION 3. AMENDMENT. Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

43-20-06. License - Fees - Display. ~~On or before January first of each year~~ In the month prior to expiration, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of the payment, the board, upon thirty days' notice, may revoke or suspend the license of the hygienist in default. The payment of the fee within that thirty-day period, with an additional sum determined by the board, excuses the default. The board may collect the fee by suit. Each licensed hygienist shall display conspicuously at the place of employment the annual registration license.

SECTION 4. AMENDMENT. Section 43-20-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-07. Licensure by credential review. Any dental hygienist who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, who has been licensed and who has been actively practicing dental hygiene for at least three years prior to the application to practice in this state, who is of good moral character and desirous of removing to this state, who deposits with the board of dental examiners a license from the examining board of the state in which the dental hygienist is licensed, certifying to the fact of being licensed, and who provides reference letters from three dentists or hygienists attesting to the dental hygienist's clinical competence, good moral character, and professional attainment, may upon the payment of the fee determined by the board, in the discretion of the board, and upon the satisfactory passing of such examinations as the board deems necessary and proper, be granted a license to practice in this state.

SECTION 5. AMENDMENT. Subsection 1 of section 43-20-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A licensed dentist may delegate to a competent dental hygienist or dental assistant those procedures over which the dentist exercises full responsibility, except those procedures that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. A dental hygienist or dental assistant may take impressions for athletic mouthguards, for rapid palatal expanders, and for passive posttreatment orthodontic retainers that do not replace missing teeth. A dental hygienist may prepare oral hygiene treatment plans to be approved by the supervising dentist.

SECTION 6. AMENDMENT. Section 43-20-12.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-12.1. Continuing educational requirement for dental hygienists. Upon the ~~fifth~~ second anniversary of the issuance of a ~~license~~ certificate of

registration to practice dental hygiene and each ~~five~~ two years thereafter, each person licensed to practice dental hygiene in this state shall provide the state board of dental examiners evidence, of a nature suitable to the board, that the licensed person has attended, or participated in the amount of continuing education in dental hygiene as is required by the board. The minimum requirement may not be less than ~~forty sixteen~~ hours during the preceding ~~five~~ two years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other evidence of continuing education approved by the board.

Any licensed person who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the person's competency to continue licensure. If, in the opinion of the board, the licensed person does not qualify for further licensed practice, the board shall suspend the license until the dental hygienist provides acceptable evidence to the board of the hygienist's competency to practice.

SECTION 7. AMENDMENT. Section 43-28-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum. The board shall hold a regular annual meeting, at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, ~~vice president~~, a member who has at least two years remaining on that member's term, president elect, a member who has at least three years remaining on that member's term, and a secretary-treasurer. The ~~secretary-treasurer~~ executive director shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation the sum of ~~ninety one~~ one hundred ten dollars for each day actually engaged in the duties of the office and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The ~~secretary-treasurer~~ executive director may be paid an annual salary in an amount determined by the board. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

SECTION 8. AMENDMENT. Section 43-28-12.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-12.2. Continuing educational requirement for dentists. Upon the ~~fifth~~ second anniversary of the issuance of a ~~license~~ certificate of registration to practice dentistry and each ~~five~~ two years thereafter, each person licensed to practice dentistry in this state shall provide the board evidence, of a nature suitable to the board, that the licensed person has attended, or participated in the amount of continuing education in dentistry required by the board. The minimum requirement may not be less than ~~eighty~~ thirty-two hours during the preceding ~~five~~ two years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other evidence of continuing education approved by the board.

Any licensed dentist who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the dentist's competency to continue licensure. If, in the opinion of the board, the licensed dentist does not qualify for further licensed practice, the board shall suspend the license until the dentist provides acceptable evidence to the board of the dentist's competency to practice.

SECTION 9. AMENDMENT. Section 43-28-16 of the North Dakota Century Code is amended and reenacted as follows:

43-28-16. Certificate - Term - Displayed in place of business - Renewal - Fee. A certificate of registration issued under this chapter is valid for ~~only one year~~ two years and must be renewed ~~on or before the first day of January in each year in the month prior to expiration.~~ before January first at the time of renewal. The fee for renewal of the certificate must be determined by the board and must be submitted ~~before January first at the time of renewal.~~ The holder of a license and certificate of registration shall display the license and certificate conspicuously in the holder's place of business. The certificate of registration or the renewal of the certificate is prima facie evidence of the right of the holder to practice dentistry in this state during the time for which it is issued. All fees provided for in this chapter may be collected by the board in a civil action.

SECTION 10. AMENDMENT. Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

43-28-17. Failure to pay annual fee - Revocation of license. Whenever a licensed dentist fails to pay the annual fee for the renewal of the certificate of registration ~~before January first~~ on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may revoke the license to practice dentistry and notify the dentist of the revocation. The payment of the annual fee within the thirty-day period, with an additional sum determined by the board will excuse the default.

SECTION 11. AMENDMENT. Subsection 1 of section 43-28-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ, keep, or retain any unregistered dentist ~~or,~~ dental hygienist, dental assistant, or other ~~unlicensed unregistered~~ persons to do any dental work whatsoever, except as otherwise provided by statute or rule.

Approved March 15, 2001
Filed March 15, 2001

CHAPTER 381

SENATE BILL NO. 2208

(Senators Krebsbach, Lee, Watne)

REAL ESTATE BROKER DUTIES

AN ACT to amend and reenact section 43-23-12.2 of the North Dakota Century Code, relating to the duties and liabilities of real estate brokerage firms and clients.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-12.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-12.2. Duties supersede common law.

1. The duties of a real estate brokerage firm, and ~~its~~ the firm's licensees, as specified in this chapter or in rules adopted ~~under~~ to implement this chapter, supersede any fiduciary duties of that real estate brokerage firm and ~~its~~ the firm's licensees, to a person based on common-law principles of agency to the extent that those common-law fiduciary duties are inconsistent with the duties specified in this chapter or in rules adopted ~~under~~ to implement this chapter.
2. A client is not liable for a wrongful act, an error, an omission, or a misrepresentation made by a licensee in connection with the licensee providing brokerage services for the client, including brokerage services provided under a subagency relationship, unless the client knows or should have known of the wrongful act, error, omission, or misrepresentation or unless the licensee is repeating a misrepresentation made by the client. This subsection ~~is intended to supersede~~ supersedes any conflicting common-law duty of the client ~~that is inconsistent with this subsection.~~
3. A real estate brokerage firm that is providing brokerage services to a client ~~and which, through a subagency relationship, works with another real estate brokerage firm to provide brokerage services to that client~~ is not liable for a wrongful act, an error, an omission, or a misrepresentation made by the ~~other~~ client, listing agent of another real estate brokerage firm, or subagent of another real estate brokerage firm, unless the ~~original~~ real estate brokerage firm knew or should have known of the ~~other brokerage firm's~~ wrongful act, error, omission, or misrepresentation or ~~the other brokerage firm~~ unless the client, listing agent of another real estate brokerage firm, or subagent of another real estate brokerage firm is repeating a misrepresentation made by the ~~original~~ real estate brokerage firm.

4. This section does not limit the liability of a licensee under section 43-23-11.1 ~~or~~ nor of a client for substantial and willful misrepresentations made in reference to a real estate transaction. As used in this section, the term "real estate brokerage firm" includes the firm and brokers and agents who work for the firm.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 382

SENATE BILL NO. 2078

(Political Subdivisions Committee)

(At the request of the State Real Estate Commission)

REAL ESTATE BROKER INSURANCE

AN ACT to create and enact five new sections to chapter 43-23 of the North Dakota Century Code, relating to real estate salesperson and broker errors and omissions insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Five new sections to chapter 43-23 of the North Dakota Century Code are created and enacted as follows:

Errors and omissions insurance required of salespersons and brokers -

Rules. The real estate commission shall adopt rules pursuant to chapter 28-32 requiring as a condition of licensure that, effective January 1, 2002, and thereafter, all real estate salespersons and brokers, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

Group insurance coverage authorized - Independent errors and omissions coverage. The real estate commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel coverage provided to any licensee, except as provided by rules adopted by the commission. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

Commission to determine conditions of errors and omissions coverage. The real estate commission shall determine the terms and conditions of errors and omissions coverage required by this chapter, including the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

Notice of terms and conditions of errors and omissions - Certificate of coverage. Each licensee must be notified of the required terms and conditions of coverage at least thirty days before the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the real estate commission.

Errors and omissions coverage not required if premium limit unobtainable. If the real estate commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed one hundred twenty-five dollars, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

CHAPTER 383

SENATE BILL NO. 2206

(Senator Tomac)

REAL ESTATE APPRAISER PRACTICE PERMITS

AN ACT to amend and reenact section 43-23.3-04, subsection 2 of section 43-23.3-08, subsection 1 of section 43-23.3-09, and section 43-23.3-23 of the North Dakota Century Code, relating to permits to practice as a real estate appraiser; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-04. Permit required - Exemptions. Except as provided in this section, ~~beginning July 1, 1994,~~ a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified appraiser without first obtaining a permit as provided in this chapter. An appraiser licensed or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a nonresident permit under section 43-23.3-11. This chapter does not apply to a licensed real estate broker or salesman who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

SECTION 2. AMENDMENT. Subsection 2 of section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

2. An applicant for a permit to practice as a licensed appraiser must have a high school education or its equivalent. In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal ~~subcommittee~~ foundation and the board.

SECTION 3. AMENDMENT. Subsection 1 of section 43-23.3-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The board may issue a permit to practice as a licensed appraiser to an individual who possesses the minimum experience requirements established by the appraisal ~~subcommittee~~ foundation and the board.

SECTION 4. AMENDMENT. Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-23. Penalties. A person acting or purporting to act as a licensed or a certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser licensed or certified in another state who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a nonresident permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 384

HOUSE BILL NO. 1155

(Industry, Business and Labor Committee)
(At the request of the Board of Massage)

MASSAGE PRACTICE

AN ACT to create and enact a new section to chapter 43-25 of the North Dakota Century Code, relating to the duties of the board of massage; to amend and reenact sections 43-25-02, 43-25-03, 43-25-04, 43-25-05, 43-25-06, 43-25-07, 43-25-08, 43-25-09, 43-25-10, 43-25-13, 43-25-14, 43-25-18, and 43-25-19 of the North Dakota Century Code, relating to the practice of massage; to repeal sections 43-25-11, 43-25-12, and 43-25-16 of the North Dakota Century Code, relating to the practice of massage; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

43-25-02. Definitions.

1. "Board" means the North Dakota board of massage.
2. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, including superficial hot and cold applications, hydrotherapy, reflexology, and the use of salts or lubricants. "Massage" does not include diagnosing or treating diseases, manipulating the spine or other joints, or prescribing or administering vitamins.
3. "Massage establishment" means any place of business where one or more of the subjects and methods of treatments defined in this section are administered or used in which massage is practiced.
3. ~~4.~~ "Massage therapist" means a person an individual who practices or administers any of the following subjects and who has studied the underlying principles of anatomy and physiology generally included in a regular course of study by a recognized and approved school of massage: the art of body massage either by hands or with a mechanical or vibratory apparatus for the purpose of body massaging; reducing or contouring; the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower, or cabinet baths. Massage is the practice of a profession scientifically applied to the patient by the operator's hands and includes such modalities as acupressure and polarity and, after July 1, 1993, massage includes reflexology. Variations of the following procedures are used: touch, stroking, friction, kneading, vibration, percussion, and medical gymnastics. Massage therapists may not diagnose or treat classified diseases, practice spinal or other joint manipulations, or prescribe or administer vitamins massage.

SECTION 2. AMENDMENT. Section 43-25-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-03. Massage therapists to be licensed. A person may not:

1. ~~Engage in the practice or~~ Practice massage, attempt to practice massage ~~for a fee or gratuity,~~ or to conduct or teach massage techniques, for a fee or gratuity or as a free demonstration, without a license issued under this chapter;
2. Operate or conduct a massage establishment unless it meets the ~~sanitary requirements of this chapter and any regulations~~ adopted by the board;
3. Employ an unlicensed person to ~~work as~~ perform a massage therapist; or
4. Practice any branch of massage as defined in subsection 3 of section ~~43-25-02, whether for payment or free demonstration, without first being a licensed massage therapist under this chapter, or without operating and maintaining a bona fide massage establishment, and without first paying a license fee to the board.~~ Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." without a license issued by the board.

SECTION 3. AMENDMENT. Section 43-25-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-04. Exemptions. The following ~~classes of~~ persons are exempt from this chapter:

1. ~~Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic, podiatry, or persons holding a drugless practitioner's certificate under the laws of this state.~~
2. ~~Registered nurses and licensed practical nurses under the laws of this state.~~
3. ~~Registered physical therapists and physical therapist assistants under the laws of this state.~~
4. ~~Schools and YMCA clubs who~~ that furnish therapy and massage services to their ~~players and members~~ student athletes.
5. ~~Registered hairdressers and cosmetologists under the laws of this state.~~
6. ~~Registered barbers under the laws of this state.~~
7. ~~Reflexologists licensed under chapter 43-49.~~
8. 2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist.

Any exemption granted under this chapter is effective only insofar as and to the extent that the bona fide practice of the profession or business of the person exempted overlaps into the field comprehended by this chapter, and exemptions under this chapter are only for those

3. Any individual who is engaged in a profession or occupation for which the individual is licensed by this state, as long as the individual's activities which are performed in the course of the bona fide practice of the business or individual's profession of the person exempted or occupation and as long as the individual does not represent to the public that the individual is a massage therapist or is engaged in the practice of massage.
4. A health spa or similar business to the extent the spa or business is performing superficial applications, including salt glows and contouring.

SECTION 4. AMENDMENT. Section 43-25-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage - Terms. The governor shall appoint ~~the a~~ board of massage, to consist of ~~three~~ five members. Three of the members of the board must be massage therapists who are licensed in this state. The members must be appointed for three years, staggered so that the term of one member expires each year; and each. Two additional members, who may not be massage therapists or immediate family members of a massage therapist, must be appointed as consumer members for two-year terms, staggered so that the term of one member expires each year. Each member shall hold of the board holds office until that member's successor is appointed and qualified.

SECTION 5. AMENDMENT. Section 43-25-06 of the North Dakota Century Code is amended and reenacted as follows:

43-25-06. Removal of members of board of massage - Officers of the board - Meeting. The governor may remove from office members of the board for neglect of duties as required by this chapter or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on ~~his or her~~ the member's resignation or death; ~~and all such appointees are to be practicing massage therapists in the state.~~

The board shall within two weeks after its appointment meet at some convenient place within the state and shall annually elect a president from their own members, and a secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of ~~his~~ the secretary-treasurer's duties. ~~The board shall hold examinations from time to time at such place or places as the board may designate.~~

~~It shall also be the duty of the board from time to time to examine and inspect or cause to be examined or inspected all massage establishments. The board and its agents and employees are authorized to enter and inspect any such massage establishment at any time during which the establishment is open for the transaction of business.~~

SECTION 6. A new section to chapter 43-25 of the North Dakota Century Code is created and enacted as follows:

Powers and duties of the board. The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board shall periodically inspect or cause to be inspected all massage establishments. The board and its agents are authorized to enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.

SECTION 7. AMENDMENT. Section 43-25-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-07. (Effective through July 31, 2001) Requisites for application and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate, a bona fide resident of this state for at least one month immediately preceding the application to take the examination, and of good moral character and temperate habits is entitled to apply to the secretary-treasurer of the board. An applicant is entitled to massage therapist licensure if the applicant:
 - a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board which may not be less than the standards of the American massage therapy association commission on massage therapy accreditation; or if the board has not adopted standards, the school of massage meets the curriculum guidelines of the American massage therapy association commission on massage therapy accreditation and the school requires at least seven hundred fifty hours of supervised instruction. Any student enrolled in a massage school on or before April 8, 1999, satisfies the requirements in this subdivision if the student presents a diploma or credentials issued by a school of massage that requires at least five hundred hours of instruction.
 - b. Passes a reasonable demonstrative, oral, and written examination conducted by the board in the art of body massage by hand or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths.
 - c. Pays the required fees. These fees must accompany the application to the secretary-treasurer of the board.
2. An applicant must achieve a general average score in the examination of seventy-five percent in all subjects involved and no score of less than fifty percent in any one subject. Any applicant failing to pass the requirements is entitled to a reexamination within six months upon payment of an additional fee of fifty dollars or a lesser amount established by the board, but two reexaminations exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct

bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

(Effective after July 31, 2001) Requisites for application and examination

- Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate, a bona fide resident of this state for at least one month immediately preceding the application to take the examination, and of good moral character and temperate habits is entitled to apply to the ~~secretary-treasurer of the board~~. An applicant is entitled to massage therapist licensure may receive a license from the board as a massage therapist if the applicant:
 - a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board; ~~which may not be less than the standards of the American massage therapy association;~~
 - b. Passes a reasonable demonstrative, oral, and written an examination conducted or approved by the board ~~in the art of body massage by hand or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths;~~ and
 - c. Pays the required fees. These fees, which must accompany the application to the ~~secretary-treasurer of the board~~.
2. An applicant ~~must achieve a general average score in the examination of seventy-five percent in all subjects involved and no score of less than fifty percent in any one subject.~~ Any applicant failing to pass the requirements examination is entitled to a reexamination within six months upon payment of an additional fee of fifty dollars or a lesser amount established by the board, but two reexaminations exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 8. AMENDMENT. Section 43-25-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-08. Fee for license. The fee to receive a license as a massage therapist is one hundred fifty dollars or a lesser amount established by the board.

SECTION 9. AMENDMENT. Section 43-25-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-09. License - Display - Renewal - Renewal fee.

1. Each license must be conspicuously displayed at the place of practice ~~and must be recorded within thirty days after issuance in the office of the~~

~~register of deeds in any county where the licensed massage therapist practices, unless the board of county commissioners designates a different official.~~

2. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the license.
3. If the board reasonably believes a massage therapist or applicant is in a physical condition jeopardizing the health of those who seek relief from the ~~massage therapist individual~~, the board may require the ~~applicant individual~~ to have a physical examination by a competent medical examiner. If the ~~applicant individual~~ has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the ~~applicant individual~~ furnishes due proof of being physically and mentally competent and sound.
4. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee and production of a new certificate of physical examination.
5. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 10. AMENDMENT. Section 43-25-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-10. Revocation of license - ~~Preferment of charges~~ Complaints.

1. The license of a massage therapist may be denied, revoked, suspended, or ~~annulled upon~~ placed on probation for any of the following grounds:
 - a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
 - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.
 - c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.

- d. The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to the extent the licensee is incapacitated from performing the professional duties of a massage therapist.
 - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or vitamins, or the licensee infringes on any other licensed profession.
 - f. The licensee is guilty of willful negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
 - g. The licensee has violated this chapter or any rule adopted by the board.
2. ~~Any licensee who does not renew a massage therapist license for two consecutive years because of sickness or other reason, or because of absence from the state, must take the examination as prescribed for an applicant to become a registered operator and comply with all the provisions of this chapter applicable to any applicant to become a licensee.~~
3. ~~Charges~~ A complaint may be ~~preferred~~ submitted to the board by any person, or ~~the board may on its own motion direct the executive officer of the board to prefer any charges.~~ Any accusation may be filed with the ~~secretary-treasurer of the board charging any licensed massage therapist with any of the offenses enumerated in this section.~~ An accusation. A complaint must be signed by the ~~accuser~~ complainant and verified under oath.
3. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

SECTION 11. AMENDMENT. Section 43-25-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board.

The secretary-treasurer of the board shall keep a record book of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of this state. ~~The original books, records, and papers of the board must be kept at the office of the secretary-treasurer.~~ The secretary-treasurer shall furnish to any person a certified copy of any record; ~~certified by the secretary-treasurer,~~ upon payment of a fee of ten dollars plus twenty-five cents per page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer shall prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed.

SECTION 12. AMENDMENT. Section 43-25-14 of the North Dakota Century Code is amended and reenacted as follows:

43-25-14. Compensation of board members - Clerks. The board members shall receive ~~fifty dollars per day and traveling expenses while~~

compensation in an amount of sixty-two dollars per day or prorated for partial days for each day or portion of a day the member is actually engaged in their the performance of official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. The secretary-treasurer ~~must be paid three dollars per member per year~~ may receive additional compensation as set by the board. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid ~~said employees to the personnel.~~

SECTION 13. AMENDMENT. Section 43-25-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity. Any person who has been duly licensed in another state to practice massage in a state that has and maintains a standard of practice which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in this practice for two years or more immediately before filing of an application to practice in this state, and who submits to the board a duly attested certificate from the examining board of the state in which registered, certifying to the fact of registration and being a person of good moral character and of professional attainments, may upon paying a fee of ~~thirty-five~~ one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination; ~~however, no license may be issued to any applicant unless the state from which the certificate is granted extends a like privilege to engage in the practice of massage within its borders to persons licensed under this chapter, upon practicing in that other state. The board may enter reciprocal relations with other states whose requirements are substantially the same as those provided in this chapter.~~

SECTION 14. AMENDMENT. Section 43-25-19 of the North Dakota Century Code is amended and reenacted as follows:

43-25-19. Penalty for violation. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the board may initiate a civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person.

SECTION 15. REPEAL. Sections 43-25-11, 43-25-12, and 43-25-16 of the North Dakota Century Code are repealed.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 385

SENATE BILL NO. 2276

(Senators Nething, Fischer, Kilzer)
(Representatives Byerly, Eckre, Hawken)

DENTISTS' LOAN REPAYMENT PROGRAM

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to a dentists' loan repayment program; to provide a continuing appropriation; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Loan repayment program - Dentists - Maximum amount of funds. Each year the state health council shall select from a pool of applicants no more than three dentists who shall provide dental services to communities in this state. The dentists are eligible to receive funds for the repayment of their education loans. The funds, which are payable over a four-year period, may not exceed eighty thousand dollars per applicant. If the state health council accepts any gifts, grants, or donations under this chapter, the council may select additional dentists for participation in the loan repayment program under this chapter.

Loan repayment program - Dentists - Powers of state health council.
The state health council may:

1. Determine the eligibility and qualifications of an applicant for loan repayment funds under this chapter.
2. Identify communities that are in need of a dentist, and establish a priority ranking for participation in the program by the selected communities.
3. Create and distribute a loan repayment application.
4. Determine the amount of the loan repayment funds for which a dentist is eligible under this chapter and in making this determination, examine any outstanding education loans incurred by the applicant.
5. Establish conditions regarding the use of the loan repayment funds.
6. Enter a four-year nonrenewable contract with the dentist and the selected community to provide to the dentist funds for the repayment of education loans in exchange for the dentist agreeing to practice in the selected community.
7. Receive and use funds appropriated for the program.
8. Enforce any contract under the program.
9. Cancel a contract for reasonable cause.

10. Participate in federal programs that support the repayment of education loans incurred by dentists and agree to the conditions of the federal programs.
11. Accept property from an entity.
12. Cooperate with the state department of health to effectuate this chapter.

Dentist selection criteria - Eligibility for loan repayment.

1. In establishing the criteria regarding a dentist's eligibility for loan repayment funds under this chapter, the state health council shall include consideration of:
 - a. The dentist's training in general dentistry or in a dental specialty and the extent to which such services are needed in a selected community.
 - b. The dentist's commitment to serve in a community that is in need of a dentist.
 - c. The compatibility of the dentist with a selected community.
 - d. The date by which the dentist would be available for service to the selected community.
 - e. The dentist's competence and professional conduct.
 - f. The dentist's willingness to accept medicare and medicaid patients.
2. A dentist who is selected to receive loan repayment funds under this chapter:
 - a.
 - (1) May not have practiced dentistry full-time in this state during the three years immediately preceding the application;
 - (2) Must have graduated from an accredited graduate specialty training program in dentistry during the year immediately preceding the application or within one year after the date of the application; or
 - (3) Must be enrolled in an accredited graduate specialty training program in dentistry; and
 - b. Must be licensed to practice dentistry in this state.
3. One out of every three dentists selected annually shall contract to provide full-time dental services for a minimum of four years in one or more selected communities having fewer than two thousand five hundred residents. One out of every three dentists selected annually shall contract to provide full-time dental services for a minimum of four years in one or more selected communities having fewer than ten thousand residents. One out of every three dentists selected annually shall contract to provide full-time dental services for a minimum of four

years in one or more selected communities having ten thousand or more residents.

Community selection criteria.

1. The state health council shall apply the following criteria in selecting a community with a defined need for the services of a dentist:
 - a. The size of the community.
 - b. The number of dentists practicing in the community and the surrounding area.
 - c. The access by residents to dentists practicing in the community and the surrounding area.
 - d. The mix of dental specialties in the community and surrounding area.
 - e. The degree to which residents support the addition of a dentist within the community.
2. The state health council shall give priority for participation to a community that demonstrates a need for a dentist or for an individual who is trained in a dental specialty.
3. In evaluating communities for participation in this program, the state health council may consult with public and private entities and visit the communities.

Eligible loans. The state health council may provide for loan repayment funds to a dentist who has received an education loan. The council may not provide funds for the repayment of any loan that is in default at the time of the application. The amount of repayment must be related to the dentist's outstanding education loans. A dentist is eligible to receive loan repayment funds in an amount equal to the outstanding balance of the dentist's education loans with applicable interest, or eighty thousand dollars, whichever is less. Loan repayment funds may not be used to satisfy other service obligations under similar programs.

Breach of loan repayment contract. If a dentist who receives loan repayment funds under this chapter breaches the loan repayment program contract by failing to begin or failing to complete the obligated service, the dentist is liable for the total amount of any loan repayment funds received. Any damages the state is entitled to recover under this chapter must be paid to the state health council, within one year from the date of the breach. Any amounts not paid within one year from the date of the breach are subject to the collection process and may be recovered through deductions in medicaid payments. Damages recoverable for a breach of the contract include all interest, costs, and expenses incurred in collection, including attorney's fees. Damages collected under this section by the health council must be deposited in the state general fund. The health council may agree to accept a lesser measure of damages for breach of a loan repayment program contract if compelling reasons are demonstrated.

Release from contract obligation.

1. The state health council shall release a dentist from the dentist's loan repayment contract, without penalty, if:
 - a. The dentist has completed the service requirements of the contract;
 - b. The dentist is unable to complete the service requirement of the contract because of a permanent physical disability;
 - c. The dentist demonstrates to the health council extreme hardship or shows other good cause justifying the release; or
 - d. The dentist dies.
2. A decision by the state health council not to release a dentist from the dentist's loan repayment contract without penalty is reviewable by district court.

Payment. The state health council may not provide any loan repayment funds to a dentist under this chapter until the dentist has practiced at least six months on a full-time basis in the selected community. Loan repayment funds for a year of obligated service are payable by the state health council no later than the end of the fiscal year in which the dentist completes the year of obligated service.

Gifts, grants, and donations - Continuing appropriation. The state health council may accept any conditional or unconditional gift, grant, or donation for the purpose of providing funds for the repayment of dentists' educational loans. If any entity desires to provide funds to the council to allow an expansion of the program beyond the three dentists contemplated by this Act, the entity shall commit to fund fully the expansion for a period of four years. The council may contract with any public or private entity and may expend any moneys available to the council to obtain matching funds for the purposes of section 1 of this Act. All money received as gifts, grants, or donations under this section is appropriated as a continuing appropriation to the state health council for the purpose of providing funds for the repayment of additional dentists' educational loans.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the fifty-seventh legislative assembly that the fifty-eighth legislative assembly provide sufficient funds for the continuation of any obligations entered by the state health council under this Act.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$180,000, or so much of the sum as may be necessary, to the state health council for the purpose of providing a dentists' loan repayment program, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 386

HOUSE BILL NO. 1079

(Agriculture Committee)

(At the request of the Board of Veterinary Medical Examiners)

BOARD OF VETERINARY MEDICAL EXAMINERS CERTIFICATES

AN ACT to amend and reenact subsection 5 of section 43-29-01.1 of the North Dakota Century Code, relating to the definition of a certificate required by the board of veterinary medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-29-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Certificate" means a certificate issued by the educational commission for foreign veterinary graduates or the educational equivalence program of the American association of veterinary state boards, indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 387

SENATE BILL NO. 2126

(Industry, Business and Labor Committee)

(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATIVE AND SECURITY SERVICES

AN ACT to amend and reenact sections 43-30-01 and 43-30-02 of the North Dakota Century Code, relating to private investigative and security services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-01 of the North Dakota Century Code is amended and reenacted as follows:

43-30-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the private investigative and security board.
2. "License" includes a registration issued by the board.
3. "Licensee" includes an individual who is registered by the board.
4. "Private investigative service" means obtaining or furnishing information with reference to any act or individual.
- ~~3.~~ 5. "Private security service" means furnishing for hire security officers or other persons to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares, and merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers, or the business of performing the service of such security officer or other person for any of these purposes.

SECTION 2. AMENDMENT. Section 43-30-02 of the North Dakota Century Code is amended and reenacted as follows:

43-30-02. Exemptions. This chapter does not apply to:

1. Any investigator or officer employed by or under any contract with the federal government, state, or any county or city thereof, appointed, elected, or contracted with, by due authority of law, while engaged in the performance of official duties.
2. Any state's attorney.
3. Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.

4. Any person whose sole investigative business is the furnishing of information as to the business and financial standing and credit of persons.
5. Any person making any investigation of any matter in which that person or the person by whom that person is solely employed is interested or involved.
6. Any person making any investigation for any person engaged in the business of transporting persons or property in interstate commerce.
7. Any adjuster or investigator representing an insurance company.
8. A person whose sole investigative business is obtaining or furnishing information about acts or individuals from public records.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 388

HOUSE BILL NO. 1159

(Judiciary Committee)
(At the request of the Attorney General)

DETECTION OF DECEPTION EXAMINER FEES

AN ACT to amend and reenact section 43-31-16 of the North Dakota Century Code, relating to detection of deception examiner fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-31-16 of the North Dakota Century Code is amended and reenacted as follows:

43-31-16. Examiner licensed in another state exempt from examination.

An applicant who is an examiner, licensed under the laws of another state of the United States, may be issued a license without examination by the attorney general, in ~~his~~ the attorney general's discretion, upon payment of a fee of ~~twenty-five~~ thirty-five dollars, and the production of satisfactory proof:

1. That the applicant is at least twenty-one years of age;
2. That the applicant is a citizen of the United States;
3. That ~~he~~ the applicant is of good moral character;
4. That the requirements for the licensing of examiners in such particular state of the United States were at the date of licensing, substantially equivalent to the requirements then in force in this state; and
5. That the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state for at least two years prior to ~~his~~ the application for license hereunder.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 389

SENATE BILL NO. 2162

(Industry, Business and Labor Committee)
(At the request of the State Board of Respiratory Care)

RESPIRATORY CARE PRACTICE

AN ACT to amend and reenact sections 43-42-01, 43-42-02, 43-42-03, 43-42-04, 43-42-05, 43-42-06, and subsection 1 of section 43-46-01 of the North Dakota Century Code, relating to the practice of respiratory care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-42-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-42-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Board" means the state board of respiratory care.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the ~~committee~~ commission on accreditation of allied health educational programs, or the ~~committee's~~ commission's successor organization.
3. "Certification examination" means the entry level examination for respiratory ~~therapy technicians~~ therapists administered by the national board for respiratory care.
4. "Certified respiratory ~~care practitioner~~ therapist" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory ~~care practitioner~~ therapist.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.
6. "Registered respiratory ~~care practitioner~~ therapist" means a person licensed by the board to practice respiratory care.
7. "Registry examination" means the advanced level examination for respiratory therapists administered by the national board for respiratory care.
8. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control,

postural drainage, chest percussion and vibration and breathing exercises, ~~respiratory~~ pulmonary rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and ~~mechanical~~ artificial airways, and insertion ~~and maintenance~~ of artificial airways. The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.

9. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.
10. "Respiratory therapy" means respiratory care.
40. 11. "Temporary respiratory ~~care practitioner~~ therapist" means any individual who is ~~enrolled in or~~ has successfully completed a bona fide respiratory care training program and is licensed by the board to practice respiratory care under the supervision or direction of either a physician, certified respiratory ~~care practitioner~~ therapist, or registered respiratory ~~care practitioner~~ therapist.

SECTION 2. AMENDMENT. Section 43-42-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-42-02. State board of respiratory care.

1. The state board of respiratory care is responsible for the enforcement and administration of this chapter and for the adoption of any rules necessary to govern the practice of respiratory care in this state.
2. The board consists of seven members appointed by the governor. ~~Two~~ Four members must be ~~registered respiratory care practitioners and two members must be certified respiratory care practitioners therapists,~~ chosen from a list of ~~four registered eight~~ eight respiratory ~~care practitioners~~ therapists and ~~four certified respiratory care practitioners therapists~~ supplied to the governor by the North Dakota society for respiratory care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint two members to be representatives of the general public. Members are appointed for terms of three years. Each member holds office until the member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.
3. The board shall annually select a chairman from among its members. The board shall meet at least twice each year and also shall meet upon the call of the chairman.
4. ~~The board shall consult with the North Dakota society for respiratory care before adopting any rules.~~

SECTION 3. AMENDMENT. Section 43-42-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-42-03. Respiratory ~~care practitioner~~ therapist licensing - Fees.

1. The board shall license as a registered respiratory ~~care practitioner~~ therapist any applicant whom the board determines to be qualified to perform the duties of a registered respiratory ~~care practitioner~~ therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. The board shall establish fees not in excess of ~~fifty one hundred~~ thirty-five seventy dollars for the issuance and renewal of a registered respiratory ~~care practitioner~~ therapist license.
2. The board shall license as a certified respiratory ~~care practitioner~~ therapist any applicant whom the board determines to be qualified to perform the duties of a certified respiratory ~~care practitioner~~ therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. The board shall establish fees not in excess of ~~thirty-five~~ seventy dollars for the issuance and renewal of a certified respiratory ~~care practitioner~~ therapist license.
3. The board shall license as a temporary respiratory ~~care practitioner~~ therapist any applicant whom the board determines to be qualified to perform duties as a temporary respiratory ~~care practitioner~~ therapist. In making this determination, the board shall require evidence that the applicant ~~is enrolled in or~~ has successfully completed a bona fide respiratory care training program. The board shall establish fees not in excess of ~~thirty-five~~ seventy dollars for the issuance ~~and renewal~~ of a temporary respiratory ~~care practitioner~~ therapist license.
4. The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.
5. The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:
 - a. Is not qualified or competent to perform the duties of a registered respiratory ~~care practitioner~~ therapist, a certified respiratory ~~care practitioner~~ therapist, or a temporary respiratory ~~care practitioner~~ therapist.
 - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
 - c. Has been found ~~guilty~~ by the board ~~of gross negligence to have been grossly negligent~~ as a registered respiratory ~~care practitioner~~ therapist, certified respiratory ~~care practitioner~~ therapist, or a temporary respiratory ~~care practitioner~~ therapist.
 - d. Has engaged in conduct as a registered respiratory ~~care practitioner~~ therapist, certified respiratory ~~care practitioner~~ therapist, or a temporary respiratory ~~care practitioner~~ therapist.

which is unethical, unprofessional, or detrimental to the ~~benefit~~ health of the public.

- e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
 - f. Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
 - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
 - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
6. The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, which are not reversed on appeal, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.
- ~~5.~~ 7. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board. Temporary licenses may not be renewed.
- ~~6.~~ 8. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

SECTION 4. AMENDMENT. Section 43-42-04 of the North Dakota Century Code is amended and reenacted as follows:

43-42-04. Respiratory care practice. The practice of respiratory care may be performed in hospitals, as ambulatory or in-home care, and in other settings where respiratory care is provided in accordance with a prescription of a licensed physician. In addition, respiratory care may be provided during the transportation of a patient, and under any circumstances where an epidemic or public disaster necessitates respiratory care. No person may practice, nor represent oneself as able to practice, as a registered respiratory ~~care practitioner~~ therapist without being licensed as a registered respiratory ~~care practitioner~~ therapist, or as a certified respiratory ~~care practitioner~~ therapist without being licensed as a certified respiratory ~~care practitioner~~ therapist, in accordance with this chapter.

SECTION 5. AMENDMENT. Section 43-42-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-42-05. Application of chapter.

1. This chapter does not prohibit a person enrolled in a bona fide respiratory care training program from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under the supervision or direction of a physician or registered respiratory ~~care practitioner~~ therapist and the person is identified as a "student respiratory ~~care practitioner~~ therapist".
2. A graduate of a bona fide respiratory care training program, who has applied for licensure under this chapter may practice respiratory care under the supervision or direction of a physician or a registered or certified respiratory ~~care practitioner~~ therapist; provided, that the graduate holds a temporary respiratory ~~care practitioner's~~ therapist's license and is identified as a "graduate respiratory ~~care practitioner~~ therapist". An applicant shall take ~~one of the next three immediately available~~ entry level certification ~~examinations~~ examination within six months following eligibility. Failure to pass any examination that is taken results in termination of the privileges provided under this subsection.
3. If examinations prepared by the national board for respiratory care are no longer available or become unacceptable to the board, the board may develop, approve, and use examinations for the licensure of registered respiratory ~~care practitioners~~ therapists and certified respiratory ~~care practitioners~~ therapists.
4. This chapter does not prevent a licensed and qualified member of another health care profession from performing any of the duties of a registered respiratory ~~care practitioner~~ therapist or a certified respiratory ~~care practitioner~~ therapist that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory ~~care practitioner~~ therapist or certified respiratory ~~care practitioner~~ therapist.
5. This chapter does not prohibit self-care by a patient or the gratuitous care by a friend or member of the family who does not represent or hold oneself out to be a registered or certified respiratory ~~care practitioner~~ therapist.
6. This chapter does not prohibit a ~~registered or certified~~ respiratory ~~care practitioner~~ therapist from performing advances in the art or techniques of respiratory care learned through formal or specialized training.

SECTION 6. AMENDMENT. Section 43-42-06 of the North Dakota Century Code is amended and reenacted as follows:

43-42-06. Reciprocity. An applicant for licensure under this chapter may be granted a license upon satisfactory proof to the board that the applicant is licensed to practice respiratory care under the laws of another state which impose substantially the same requirements as this chapter, and upon payment of the annual license fee.

SECTION 7. AMENDMENT. Subsection 1 of section 43-46-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Board" means:

- a. The board of registry in podiatry;
- b. The state board of chiropractic examiners;
- c. The state board of funeral service;
- d. The North Dakota board of nursing;
- e. The North Dakota state board of optometry;
- f. The state board of pharmacy;
- g. The state board of medical examiners;
- h. The North Dakota board of massage;
- i. The state examining committee for physical therapists;
- j. The state board of dental examiners;
- k. The state board of veterinary medical examiners;
- l. The North Dakota state board of psychologist examiners;
- m. The board for licensing hearing aid dealers and fitters;
- n. The North Dakota state board of examiners for nursing home administrators;
- o. The state board of examiners of audiology and speech pathology;
- p. The North Dakota board of athletic trainers;
- q. The board of occupational therapy practice;
- r. The North Dakota board of social work examiners;
- s. The North Dakota ~~respiratory care examining~~ state board of respiratory care;
- t. The board of dietetic practice;
- u. The board of addiction counseling examiners; and
- v. Any health care related board granted licensing authority by the legislative assembly after July 1, 1989.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 390

SENATE BILL NO. 2115

(Industry, Business and Labor Committee)
(At the request of the Attorney General)

REGULATED OCCUPATION OR PROFESSION PRACTICE

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the practice of a regulated occupation or profession.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

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

1. "Board" means a board, commission, or other agency of state government created or identified in this title to regulate a particular occupation or profession, except for the:
 - a. State board of accountancy;
 - b. State electrical board;
 - c. North Dakota real estate appraiser qualifications and ethics board;
 - d. State real estate commission;
 - e. Secretary of state with respect to contractor licensing;
 - f. State board of medical examiners; and
 - g. State board of dental examiners.

"Board" also includes any agency of state government which is created or identified outside this title to regulate a particular occupation or profession if the agency elects, by administrative rule, to invoke the authority in this chapter.

2. "Foreign practitioner" means an individual who currently holds and maintains a license in good standing to engage in an occupation or profession in a state or jurisdiction other than this state and who is not the subject of a pending disciplinary action in any state or jurisdiction.
3. "Good standing" means a foreign practitioner holds a current license that is not issued on a temporary or restricted basis, is not encumbered or on probation, and is not suspended or revoked.
4. "License" means a license, certificate, permit, or similar authorization to practice an occupation or profession which is issued by a government

agency in another state or jurisdiction that imposes requirements for obtaining and maintaining a license which are at least as stringent as the requirements imposed in this state to obtain and maintain a license to practice the same profession or occupation.

5. "Occupation or profession" means activity for which a license is required from a board or similar activity for which a license is required in another state or jurisdiction.

Location of practice of an occupation or profession. The provision of services to an individual in this state which fall within the standard of practice of a profession or occupation regulated by a board, regardless of the means by which the services are provided or the physical location of the person providing those services, constitutes the practice of that occupation or profession in this state and is subject to regulation by the appropriate board in this state.

Indirect practice without a license.

1. A foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the appropriate board if the services are provided through consultation with the person licensed by the board and if the foreign practitioner has no direct communication in this state with the individual receiving the services except in the presence of the individual who is licensed by the board. Both the foreign practitioner and the individual licensed by the board are responsible for the services provided under this subsection.
2. A foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the appropriate board if the services are provided through a remote means and are a continuation of an existing relationship between the foreign practitioner and the individual receiving the services which was formed in the state or jurisdiction in which the foreign practitioner is currently licensed.

Emergency practice without a license. Upon prior written notice to the appropriate board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the board, if the services are provided for a period of time not to exceed sixty consecutive days in a calendar year and are provided in response to a disaster declared by the appropriate authority in this state. The notice provided by a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. A notice provided under this section, if accompanied by sufficient documentation, is deemed to be accepted unless denied by the board. If a notice under this section is denied, the foreign practitioner immediately shall cease providing services under this section and may not resume providing services until after a successful appeal of the board's decision under chapter 28-32 or after an application for privileges under this section is reviewed and approved by the board.

Limited practice without a license. Upon prior written application to the appropriate board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by

this title without obtaining a license from the board if the services are provided for no more than thirty full or partial days per year. The one-year period commences on the date the written application is approved by the board. An application from a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. The board may require payment of a fee of twenty-five dollars or other fee established by the board by administrative rule, not to exceed the higher of twenty-five dollars or one-tenth of the fee for an annual license from the board, as a condition of approving an application under this section.

Licensure without examination. A board may issue a license, without examination, to any foreign practitioner who has practiced the occupation or profession for which the practitioner is licensed at least two years prior to submitting the application to the board, or for any shorter period of time provided in this title or established by the board by administrative rule, and who meets the other requirements for a license. A board is not prohibited from issuing a license under this section to a foreign practitioner if the state or jurisdiction in which the individual is licensed does not extend similar privileges to individuals licensed in this state. This section does not prohibit a board from requiring a foreign practitioner to take an examination regarding the laws of this state and the rules established by the board.

License compacts. A board may establish, by administrative rule, conditions and procedures for foreign practitioners to practice in this state pursuant to written compacts or agreements between the board and one or more other states or jurisdictions or pursuant to any other method of license recognition that ensures the health, safety, and welfare of the public. Any compact or agreement by a board does not become binding on this state until implemented by administrative rules under this section.

Discipline. A foreign practitioner's authority to practice an occupation or profession under this chapter is subject to denial, probation, suspension, revocation, or other form of discipline for the same grounds as individuals licensed by the appropriate board in this state. In addition to other grounds for disciplinary action authorized by law, a person who holds a license issued by a board may be subject to disciplinary action in this state for:

1. Failing to adequately review services provided by a foreign practitioner under this chapter;
2. Unauthorized practice of the person's occupation or profession in another state or jurisdiction, including the delivery of services by a licenseholder in this state to a recipient of services in another state or jurisdiction;
3. Acts occurring in another state or jurisdiction which could subject the person to disciplinary action if those acts occurred in this state; or
4. Acts occurring in another state or jurisdiction which could subject the person to disciplinary action if the person held a license in that state or jurisdiction.

A disciplinary action under this section against a foreign practitioner is subject to chapter 28-32.

Jurisdiction - Service of process. A foreign practitioner who provides services in this state without a license as permitted in this chapter shall be deemed to have consented to the jurisdiction of this state and the appropriate board, to be bound by the laws of this state and the rules established by the appropriate board, and to have appointed the secretary of state as the foreign practitioner's agent upon whom process may be served in any action or proceeding against the practitioner arising out of the practitioner's activities in this state.

Service on the secretary of state of any process, notice, or demand is deemed personal service upon the foreign practitioner and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, with the filing fee of twenty-five dollars. A member of the legislative assembly or a state or county officer may not be charged for filing any process, notice, or demand for service. The secretary of state shall immediately forward a copy of the process, notice, or demand by registered mail, addressed to the foreign practitioner at the address provided by the filer.

Application with other laws. This chapter applies notwithstanding any other limitation in state law on the practice of an occupation or profession. This chapter supplements and does not repeal the authority provided to each board. Nothing in this chapter prohibits a board from imposing conditions on foreign practitioners by administrative rule or compact which are more restrictive than those imposed in this chapter, if those restrictions are enacted to ensure the health, safety, and welfare of the public. Rules under this section may be adopted as emergency rules under chapter 28-32. Nothing in this chapter alters the scope of practice of a particular occupation or profession as defined by law.

Approved March 22, 2001
Filed March 22, 2001

CHAPTER 391

HOUSE BILL NO. 1304

(Representatives Maragos, Brekke)
(Senator Traynor)

INTERPRETING PRACTICE

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the practice of interpreting for the deaf and hard-of-hearing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

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

1. "Consumer" means an individual who is deaf, deaf-blind, speech-impaired, hard-of-hearing, or who requires special communication techniques in order to communicate.
2. "Interpreter" means an individual who engages in the practice of interpreting.
3. "Interpreting" means the translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or translating of a consumer's specialized vocabulary to English concepts. Necessary specialized vocabularies include American sign language, English-based sign language, and oral interpreting.
4. "Nationally recognized certification" means certification granted by a national organization that is based on a skills assessment of the applicant. These organizations include the registry of interpreters for the deaf and the national association of the deaf.

Practice of interpreting. An individual may not practice or represent oneself as an interpreter for deaf, deaf-blind, speech-impaired, or hard-of-hearing individuals in the state unless the individual holds a valid nationally recognized certification. However, an individual who was practicing as an interpreter in this state before August 1, 2001, has until July 31, 2003, to meet the certification requirement under this section.

Exceptions. This chapter does not prevent or restrict:

1. A nonresident interpreter working in this state not more than nineteen days per year.
2. An interpreter working at a religious activity.
3. An interpreter working as a volunteer without compensation.

4. An interpreter working in an emergency. An emergency is a situation in which the consumer decides that the length of time needed to obtain a licensed interpreter is likely to cause injury or loss to the consumer.
5. The activities and services of an interpreter intern or student-in-training enrolled in a program of study in interpreting at an accredited institution of higher learning; interpreting under the supervision of a licensed interpreter as part of a supervised program; and identified as an interpreter intern or student-in-training.
6. An individual using sign language or a manual communication system as a means of communication with or on behalf of a family member, a deaf individual, a deaf-blind individual, a speech-impaired individual, or hard-of-hearing individual who has specifically requested that use by that individual.
7. A communication made as a reasonable accommodation for the employment of a deaf, deaf-blind, speech-impaired, or hard-of-hearing individual.
8. A communication with a deaf, deaf-blind, speech-impaired, or hard-of-hearing individual who could not communicate using American sign language or English-based sign language.

Approved April 5, 2001
Filed April 5, 2001