

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2153

Introduced by

Human Services Committee

(At the request of the Office of Management and Budget)

1 A BILL for an Act to create and enact a new chapter to title 57 of the North Dakota Century
2 Code, relating to a provider assessment for intermediate care facilities for the mentally
3 retarded; and to provide a penalty.

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

5 **SECTION 1.** A new chapter to title 57 of the North Dakota Century Code is created and
6 enacted as follows:

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

- 8 1. "Business" has the meaning provided in section 31-08.1-01.
- 9 2. "Commissioner" means the state tax commissioner.
- 10 3. "Facility" includes the operating entity of each intermediate care facility for the
11 mentally retarded located in this state.
- 12 4. "Intermediate care facility for the mentally retarded" means a treatment or care
13 center licensed under chapter 25-16 that provides services eligible for coverage as
14 medical assistance under 42 U.S.C. 1396a(a)(31), and also means the
15 developmental center at westwood park, Grafton.
- 16 5. "Licensed bed" means a bed licensed under chapter 25-16 or approved by the
17 secretary of health and human services pursuant to 42 U.S.C. 1396i.
- 18 6. "Quarter" means one of four calendar quarters beginning January first, April first,
19 July first, or October first.

20 **Imposition of assessment.** An assessment must be imposed on each intermediate
21 care facility for the mentally retarded licensed in this state. No waiver otherwise available
22 under this code is applicable to this assessment.

23 **Basis of assessment.** Every year beginning July first, each intermediate care facility
24 for the mentally retarded must be assessed a quarterly rate per licensed bed as of the first day

1 of each quarter. The quarterly rate may not exceed a rate calculated by the department of
2 human services as an annual aggregate of gross revenues as of December thirty-first of the
3 preceding year for all intermediate care facilities for the mentally retarded, multiplied by one
4 and one-half percent, and divided by licensed beds as of December thirty-first of the preceding
5 year.

6 **Reports - Extension.**

- 7 1. On or before the last day of a quarter, each facility required to pay an assessment
8 under this chapter must make out a return for the quarter in the form and manner
9 prescribed by the commissioner. The facility shall report the number of licensed
10 beds as of the first day of the quarter, the amount of the assessment for the
11 quarter covered by the return, and include such further information the
12 commissioner may require to enable the commissioner to correctly compute and
13 remit the assessment levied by this chapter.
- 14 2. Upon request by a facility and a proper showing of the necessity, the
15 commissioner may grant to the facility an extension of time not exceeding thirty
16 days for making a return. If an extension is granted to a facility, the time the facility
17 is required to make payment of the assessment liability must be extended for the
18 same period. Interest must be charged upon the amount of the deferred payment
19 at the rate of twelve percent per annum from the date the assessment would have
20 been due if the extension had not been granted to the date the assessment is paid.
- 21 3. A return must be signed by a duly authorized agent of the facility and must contain
22 a written declaration that the return is made and subscribed under the penalties of
23 this chapter.

24 **Payment of assessment.** An assessment levied under this chapter must be paid on a
25 quarterly basis and is due and payable on the last day of the quarter.

26 **Penalties - Offenses.**

- 27 1. If a facility's return or corrected return is not filed or the assessment is not paid
28 within the time required by this chapter or, if upon audit, the facility is found to owe
29 an additional assessment, the facility is subject to a penalty of five percent of the
30 amount of assessment due, plus interest of one percent of the assessment for
31 each month of delay or fraction thereof, excepting the first month after the

1 assessment becomes due. If satisfied that the delay was excusable, the
2 commissioner may waive and, if paid, refund all or any part of the penalty and
3 interest. The penalty and interest must be paid to the commissioner and disposed
4 of in the same manner as other receipts under this chapter. Unpaid penalties and
5 interest may be enforced in the same manner as the assessment imposed under
6 this chapter.

- 7 2. A person failing to comply with this chapter or failing to remit the assessment
8 provided by this chapter to the commissioner on a timely basis is guilty of a class B
9 misdemeanor.

10 **Records required.** A facility required to pay an assessment under this chapter shall
11 preserve and maintain the records as the commissioner may require for a period of three years
12 and one month. All records must be open to examination at any time by the commissioner or
13 any of the commissioner's duly authorized agents.

14 **Officer and manager liability.**

- 15 1. If a business that owns or operates a facility fails for any reason to file a required
16 return or to pay an assessment due, any of its officers or managers having control
17 or supervision of, or charged with the responsibility for making a return or payment
18 is personally liable for the failure. The dissolution of a business does not
19 discharge an officer's or manager's liability for a prior failure of the business to
20 make a return or remit the assessment due.
- 21 2. If any of the officers or managers elect not to be personally liable for the failure to
22 file the required return or to pay the assessment due, the facility shall make a cash
23 deposit or post with the commissioner a bond or undertaking executed by a surety
24 company authorized to do business in this state. The cash deposit, bond, or
25 undertaking must be in an amount equal to the estimated annual assessment
26 liability of the facility.

27 **Commissioner to administer chapter.**

- 28 1. The commissioner is charged with the administration of this chapter and shall
29 enforce the assessment, levy, and collection of assessments imposed under this
30 chapter.

2. For the purpose of ascertaining the correctness of a return or for the purpose of ascertaining the number of licensed beds of a facility, the commissioner shall examine or cause to be examined by an agent or representative designated by the commissioner any books, papers, records, or memoranda; require by subpoena the attendance and testimony of witnesses; issue and sign subpoenas; administer oaths; examine witnesses and receive evidence; and compel witnesses to produce for examination books, papers, records, and documents relating to any matter which the commissioner has the authority to investigate or determine.
3. If the commissioner finds an officer or manager of a facility has made a fraudulent return, the costs of a hearing must be assessed to the facility. In all other cases, the costs must be paid by the state.
4. The fees and mileage to be paid witnesses and assessed as costs must be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs must be assessed in the manner provided by law in proceedings in civil cases. When the costs are assessed to the facility, the costs must be added to the assessment charged against the facility and must be collected in the same manner. Costs assessed to the state must be certified by the commissioner to the state treasurer, who shall issue warrants for the amount of the costs.
5. In cases of disobedience to a subpoena, the commissioner may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents. The court may issue an order requiring the person to appear before the commissioner and give evidence or produce records, books, papers, and documents. A failure to obey an order of the court may be punished by the court as contempt.
6. Testimony on hearings before the commissioner may be taken by a deposition as in civil cases and an individual may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as provided by this section.

Lien of assessment - Collection - Action authorized.

1. Whenever a facility liable to pay an assessment or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition

to the assessment, together with the costs that may accrue, is a lien in favor of this state upon all property and rights to property, whether real or personal, belonging to the facility. In the case of property in which a deceased owner, officer, or manager of a facility held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivor or survivors to the extent of the deceased owner's, officer's, or manager's interest, which interest must be determined by dividing the value of the entire property at the time of the officer's or manager's death by the number of joint tenants or persons interested therein.

2. The lien attaches at the time the assessment becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this subsection, the words "due" and "due and payable" mean the first instant the assessment becomes due.
3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the facility.
 - b. The tax identification number of the facility or social security number of the owner, officer, or manager of the facility.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. A notice of lien filed by the commissioner with the recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the indexing of the notice of lien, or for its satisfaction.

6. Upon payment of the assessment as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.

7. Upon the request of the commissioner, the attorney general shall bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any assessments and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property. The state's attorney of the county in which the action is pending shall assist the attorney general.

8. The remedies of this section are cumulative. Action taken by the commissioner or attorney general may not be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

9. The technical, legal requirements in this section relating to assessment liens on all real and personal property of the officer or manager of the facility to ensure payment of the assessment, including penalties, interest, and other costs, are self-explanatory.

Commissioner may require bond. When in the commissioner's judgment it is necessary and advisable to do so in order to secure the collection of the assessment levied under this chapter, the commissioner may require a person subject to the assessment to file with the commissioner a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility in an amount the commissioner may fix, to secure the payment of any assessment and penalties due or which may become due from the person. In lieu of the bond, securities approved by the commissioner in the amounts as the commissioner prescribes may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold by the commissioner at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any assessment and penalties due. All moneys deposited as security with the commissioner under this section must be paid by the commissioner to the state treasurer and must be credited by the state treasurer into a special fund to be known as the provider assessment trust fund. If any assessment, penalty, or costs imposed by this chapter are not paid when due, by the person depositing moneys with the

1 commissioner as security for the payment of the assessment, penalty, or costs imposed by this
2 chapter, the commissioner shall certify that information to the director of the office of
3 management and budget who shall transmit the money to the commissioner who shall apply
4 the money deposited by the person or so much thereof as is necessary to satisfy the
5 assessment and penalties due. When in the commissioner's judgment it is no longer necessary
6 to require the deposit to be maintained by the person, the commissioner shall certify that
7 information to the director of the office of management and budget who shall pay the unused
8 money to the entitled person.

9 **Correction of errors.** If it appears that, as a result of a mistake, an amount of
10 assessment, penalty, or interest has been paid which was not due under this chapter, the
11 amount must be credited against any assessment due, or to become due, under this chapter
12 from the person who made the erroneous payment, or the amount must be refunded to the
13 person. The person who made the erroneous payment shall present a claim for refund or credit
14 to the commissioner not later than three years after the due date of the return for the period for
15 which the erroneous payment was made or one year after the erroneous payment was made,
16 whichever is later.

17 **Provider assessment fund.** There is a special fund in the state treasury known as the
18 provider assessment fund. The fund includes all revenue received from intermediate care
19 facilities for the mentally retarded for remittance to the fund under this chapter. All moneys
20 designated for the fund from whatever source derived must be deposited with the state
21 treasurer in the provider assessment fund.