

HEALTH AND SAFETY

CHAPTER 230

SENATE BILL NO. 2189

(Senator Kilzer)
(Representative Porter)

IMMUNIZATION DATA EXCHANGE

AN ACT to amend and reenact section 23-01-05.3 of the North Dakota Century Code, relating to the exchange of immunization data.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-05.3 of the North Dakota Century Code is amended and reenacted as follows:

23-01-05.3. Immunization data. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another, ~~with the patient's verbal or written consent, limited.~~ Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient, and may be exchanged regardless of the date of the immunization, if the person requesting access to the immunization data provides services to the patient.

Approved March 14, 2005

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CHAPTER 231

SENATE BILL NO. 2112

(Senators Brown, Syverson, J. Lee, Flakoll)
(Representatives Ekstrom, Boehning)

ORGAN DONOR IDENTIFICATION CARDS

AN ACT to amend and reenact sections 23-06.2-01, 23-06.2-02, and 39-06-03.1 of the North Dakota Century Code, relating to identification as an organ donor on nondriver photo identification cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

23-06.2-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.
2. "Decedent" means a deceased individual and includes a stillborn infant or fetus.
3. "Document of gift" means a card; a statement attached to or imprinted upon a motor vehicle operator's license; or permit or nondriver photo identification card issued by the department of transportation; a will; or any other writing used to make an anatomical gift.
4. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.
5. "Enucleator" means an individual who has successfully completed a course in eye enucleation conducted by the department of ophthalmology of an accredited college of medicine that has been approved by the state board of medical examiners.
6. "Hospital" means a facility licensed, accredited, or approved as a hospital under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state law.
7. "Part" means an organ, tissue, eye, bone, artery, blood, fluid, and any other portion of a human body.
8. "Physician" or "surgeon" means an individual licensed or authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.
9. "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts thereof.

10. "State" means any state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States of America.
11. "Technician" means an individual who is licensed or certified by the state board of medical examiners to remove or process a part.

SECTION 2. AMENDMENT. Section 23-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-06.2-02. Making, amending, revoking, and refusing to make anatomical gifts by individual.

1. An individual who has attained eighteen years of age may make an anatomical gift for any of the purposes specified in subsection 1 of section 23-06.2-06 or may refuse to make an anatomical gift. An individual may limit an anatomical gift to one or more of the purposes specified in subsection 1 of section 23-06.2-06.
2. An anatomical gift may be made by a document of gift.
 - a. A document of gift must be signed by the donor. If the donor cannot sign, the document of gift must state that it has been signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and in the presence of each other.
 - b. A document of gift may be a statement attached to or imprinted upon a donor's motor vehicle operator's license, or permit or nondriver photo identification card issued by the department of transportation subject to subdivision a. Revocation, suspension, expiration, or cancellation of the license, permit, or identification card does not invalidate the anatomical gift.
 - c. Notwithstanding subsection 2 of section 23-06.2-08, a document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator for the purpose.
3. An anatomical gift by will becomes effective upon death of the testator without waiting for probate. If the will is not probated, or if, after death, it is declared invalid for testamentary purposes, the gift is nevertheless valid.
4. The donor may amend or revoke an anatomical gift, not made by will, only by:
 - a. A signed statement;
 - b. An oral statement made in the presence of two individuals;
 - c. Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

- d. The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.
5. An anatomical gift made by a will may be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection 4.
6. An anatomical gift that is not revoked by the donor is irrevocable and does not require the consent or concurrence of any other person after the death of the donor but is subject to subsection 2 of section 23-06.2-11.
7. A potential donor may refuse to make an anatomical gift by a writing executed in the same manner as an anatomical gift is made or any other instrument used to identify the individual as refusing to make an anatomical gift. It may be an oral statement or other form of communication during a terminal illness or injury.
8. An anatomical gift of a part by a donor pursuant to subsection 1 is not a refusal to give other parts in the absence of contrary indications by the donor and is not a limitation on a gift or release of other parts pursuant to sections 23-06.2-03 and 23-06.2-04.
9. A revocation or amendment of an anatomical gift by a donor is not a refusal to make another anatomical gift in the absence of contrary indications by the donor. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor must make a refusal pursuant to subsection 7.

SECTION 3. AMENDMENT. Section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-03.1. Nondriver photo identification card issued by director - Release of information - Penalty - Public awareness.

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. The application must provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.2. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.2. If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age.
2. The name and date of birth on all original applications must be verified by a birth certificate or other satisfactory evidence. Applicants must produce documents which will be acceptable as listed below:
 - a. Birth certificate.

- b. Any other documentary evidence which confirms to the satisfaction of the examining officer the true identity and date of birth of the applicant.
3. The fee is eight dollars. Fees collected pursuant to this section must be paid monthly into the highway fund in the state treasury.
4. Any information obtained by the director from an applicant for the issuance, renewal, or replacement of an identification card issuable pursuant to this chapter may only be released in accordance with the provisions of section 39-16-03.
5. It is a class B misdemeanor for any person, except the director or the director's authorized agent, to print or otherwise produce or reproduce cards or their components, which may be utilized as identification cards issued pursuant to this section.
6. The director is hereby authorized to utilize whatever advertising deemed necessary to make the public aware may advertise the availability and the use of the card and its use.
7. Identification cards issued pursuant to this section ~~shall be~~ are sufficient identification ~~whenever~~ for all identification is required purposes.
8. The director shall cancel any card upon determining that the holder is not entitled to the issuance of the card under the laws of this state, or the holder has failed to give the required or correct information to the director, or has committed fraud in making ~~such~~ the application, or the fee was in the form of an insufficient or no-account check. Upon cancellation, the holder shall surrender ~~such~~ the card to the director. When a cancellation is in effect, any law enforcement officer may take custody of ~~such~~ the card.
9. A duplicate card may be obtained by making an application and paying an eight dollar fee. For a cardholder who has reached the age of eighteen or twenty-one, a replacement card may be obtained by making an application and paying an eight dollar fee.

Approved March 22, 2005

Filed March 25, 2005

CHAPTER 232

SENATE BILL NO. 2343

(Senators J. Lee, Fischer, Robinson)
(Representatives Gulleason, Price, Svedjan)

HEALTH CARE DIRECTIVES

AN ACT to create and enact a new section to chapter 23-06.5 of the North Dakota Century Code, relating to health care directives; to amend and reenact subsection 2 of section 12.1-31-07 and sections 23-06.5-01, 23-06.5-02, 23-06.5-03, 23-06.5-05, 23-06.5-06, 23-06.5-07, 23-06.5-08, 23-06.5-09, 23-06.5-10, 23-06.5-11, 23-06.5-12, 23-06.5-13, 23-06.5-15, 23-06.5-16, 23-06.5-17, and 23-06.5-18 of the North Dakota Century Code, relating to health care decisions and directives; and to repeal chapter 23-06.4 of the North Dakota Century Code, relating to treatment declarations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-31-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided for by chapters ~~23-06.4~~, 23-06.5, and 30.1-30, a caregiver who knowingly performs an act that causes a disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the disabled adult or vulnerable elderly adult and the failure causes the disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, is guilty of a class B felony.

SECTION 2. AMENDMENT. Section 23-06.5-01 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-01. Statement of purpose. Every competent adult has the right and responsibility to make the decisions relating to the adult's own health care, including the decision to have health care provided, withheld, or withdrawn. The purpose of this chapter is to enable adults to retain control over their own medical health care during periods of incapacity through health directives and the prior designation of an individual to make health care decisions on their behalf. This chapter does not condone, authorize, or approve mercy killing, or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

SECTION 3. AMENDMENT. Section 23-06.5-02 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-02. Definitions. In this chapter, unless the context otherwise requires:

1. "Agent" means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care directive for the individual granting the power.

2. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
3. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care, and the ability to communicate a health care decision.
4. ~~"Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter.~~
5. "Health care decision" means consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including:
 - a. Selection and discharge of health care providers and institutions;
 - b. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate;
 - c. Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and
 - d. Establishment of an individual's abode within or without the state and personal security safeguards for an individual, to the extent decisions on these matters relate to the health care needs of the individual.
5. "Health care directive" means a written instrument that complies with this chapter and includes one or more health care instructions, a power of attorney for health care, or both.
6. "Health care instruction" means an individual's direction concerning a health care decision for the individual, including a written statement of the individual's values, preferences, guidelines, or directions regarding health care directed to health care providers, others assisting with health care, family members, an agent, or others.
6. 7. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.
7. 8. "Long-term care facility" or "long-term care services provider" means a long-term care facility as defined in section 50-10.1-01.
8. 9. "Principal" means an adult who has executed a ~~durable power of attorney for health care~~ directive.

SECTION 4. AMENDMENT. Section 23-06.5-03 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-03. Scope and duration of authority Health care directive.

1. A principal may execute a health care directive. A health care directive may include one or more health care instructions to health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a power of attorney to appoint an agent to make health care decisions for the principal when the principal lacks the capacity to make health care decisions. Subject to the provisions of this chapter and any express limitations set forth by the principal in the durable power of attorney for health care directive, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.
2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:
 - a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the durable power of attorney for health care or in a declaration executed pursuant to chapter 23-06.4 principal's health care directive; or
 - b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.
3. Under a durable power of attorney for health care, A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity.
4. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.
5. Nothing in this chapter permits an agent to consent to admission to a mental health facility or state institution for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

SECTION 5. AMENDMENT. Section 23-06.5-05 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-05. Health care directive requirements - Execution and witnesses. The durable power of attorney for

1. To be legally sufficient in this state, a health care directive must:
 - a. Be in writing;
 - b. Be dated;

- c. State the principal's name;
 - d. Be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal;
 - e. Contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses as provided under this chapter; and
 - f. Include a health care instruction or a power of attorney for health care, or both.
2. A health care directive must be signed by the principal and that signature must be verified by a notary public or at least two or more subscribing witnesses who are at least eighteen years of age. A person notarizing the document may be an employee of a health care or long-term care provider providing direct care to the principal. At least one witness to the execution of the document must not be a health care or long-term care provider providing direct care to the principal or an employee of a health care or long-term care provider providing direct care to the principal on the date of execution. The notary public or any witness may not be, at the time of execution, the agent, the principal's spouse or heir, a person related to the principal by blood, marriage, or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, any other person who has, at the time of execution, any claims against the estate of the principal, a person directly financially responsible for the principal's medical care, or the attending physician of the principal. If the principal is physically unable to sign, the ~~durable power of attorney for health care~~ health care directive may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

SECTION 6. A new section to chapter 23-06.5 of the North Dakota Century Code is created and enacted as follows:

Suggested health care directive form. A health care directive may include provisions consistent with this chapter, including:

1. The designation of one or more alternate agents to act if the named agent is not reasonably available to serve;
2. Directions to joint agents regarding the process or standards by which the agents are to reach a health care decision for the principal, and a statement whether joint agents may act independently of one another;
3. Limitations, if any, on the right of the agent or any alternate agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;
4. Limitations, if any, on the nomination of the agent as guardian under chapter 30.1-28;

5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter 23-06.2 or an amendment to, revocation of, or refusal to make an anatomical gift;
6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on the appointment of an agent; and
7. Health care instructions regarding artificially administered nutrition or hydration.

SECTION 7. AMENDMENT. Section 23-06.5-06 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-06. Acceptance of appointment - Withdrawal. To be effective, the agent must accept the appointment in writing. Subject to the right of the agent to withdraw, the acceptance creates a duty authority for the agent to make health care decisions on behalf of the principal at such time as the principal becomes ~~incapable~~ incapacitated. Until the principal becomes ~~incapable~~ incapacitated, the agent may withdraw by giving notice to the principal. After the principal becomes ~~incapable~~ incapacitated, the agent may withdraw by giving notice to the attending physician. The attending physician shall cause the withdrawal to be recorded in the principal's medical record.

SECTION 8. AMENDMENT. Section 23-06.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-07. Revocation.

1. A ~~durable power of attorney~~ for health care directive is revoked:
 - a. By notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the ~~power~~ directive; or
 - b. By execution by the principal of a subsequent ~~durable power of attorney~~ for health care directive.
2. A principal's health care or long-term care services provider who is informed of or provided with a revocation of a ~~durable power of attorney~~ for health care directive shall immediately record the revocation in the principal's medical record and notify the agent, if any, the attending physician, and staff responsible for the principal's care of the revocation.
3. ~~If~~ Unless otherwise provided in the health care directive, if the spouse is the principal's agent, the divorce of the principal and spouse revokes the appointment of the divorced spouse as the principal's agent.

SECTION 9. AMENDMENT. Section 23-06.5-08 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-08. Inspection and disclosure of medical information. Subject to any limitations set forth in the ~~durable power of attorney~~ for health care directive by the principal, an agent whose authority is in effect may for the purpose of making health care decisions:

1. Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;
2. Execute any releases or other documents which may be required in order to obtain such medical information; and
3. Consent to the disclosure of such medical information.

SECTION 10. AMENDMENT. Section 23-06.5-09 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-09. Action by Duties of provider.

1. A principal's health care or long-term care services provider, and employees thereof, having knowledge of the principal's ~~durable power of attorney for health care directive~~, are bound to follow the directives health care decisions of the principal's designated agent or a health care instruction to the extent they are consistent with this chapter and the durable power of attorney for health care directive.
2. ~~If because of a moral or other conflict with a specific directive given by the agent, a~~ A principal's health care or long-term care services provider finds it impossible to follow that directive, the provider has the duty to inform the agent and if possible the principal, and may decline to comply with a health care decision of a principal's designated agent or a health care instruction for reasons of conscience or other conflict. A provider that declines to comply with a health care decision or instruction shall take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's health care decision, or instruction or directive, and shall provide continuing care to the principal until a transfer can be effected.
3. This chapter does not require any physician or other health care provider to take any action contrary to reasonable medical standards.
4. This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort, care, or alleviation of pain.
5. Notwithstanding a contrary direction contained in a health care directive executed under this chapter, health care must be provided to a pregnant principal unless, to a reasonable degree of medical certainty as certified on the principal's medical record by the attending physician and an obstetrician who has examined the principal, such health care will not maintain the principal in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the principal or will prolong severe pain that cannot be alleviated by medication.
6. In the absence of a direction to the contrary contained in a health care directive prepared under this chapter, nothing in this chapter requires a physician to withhold, withdraw, or administer nutrition or hydration, or both, from or to the principal. Nutrition or hydration, or both, must be withdrawn, withheld, or administered, if the principal for whom the administration of nutrition or hydration is considered, has directed in a

health care directive the principal's desire that nutrition or hydration, or both, be withdrawn, withheld, or administered. If a health care directive prepared under this chapter does not indicate the principal's direction with respect to nutrition or hydration, nutrition or hydration, or both, may be withdrawn or withheld if the attending physician has determined that the administration of nutrition or hydration is inappropriate because the nutrition or hydration cannot be physically assimilated by the principal or would be physically harmful or would cause unreasonable physical pain to the principal.

SECTION 11. AMENDMENT. Section 23-06.5-10 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-10. Freedom from influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a durable power of attorney for health care directive as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a durable power of attorney for health care directive.
2. A durable power of attorney for health care The appointment of an agent is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the district court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the durable power of attorney for health care appointment to the principal or unless the principal acknowledges in writing that the principal has read the explanation prefacing the statutory form in section 23-06.5-17 or a similar written explanation of the nature and effect of a durable power of attorney for health care the appointment. It is the intent of this subsection to recognize that some residents of long-term care facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willingly and voluntarily executing a durable power of attorney for health care.
3. A durable power of attorney for health care The appointment of an agent is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice in this state signs a statement that the person has explained the nature and effect of the durable power of attorney for health care appointment to the principal or unless the principal acknowledges in writing that the principal has read the explanation prefacing the statutory form in section 23-06.5-17 or a similar written explanation of the nature and effect of a durable power of attorney for health care the appointment.

SECTION 12. AMENDMENT. Section 23-06.5-11 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-11. Reciprocity. This chapter does not limit the enforceability of a ~~durable power of attorney for health care directive~~ or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction.

SECTION 13. AMENDMENT. Section 23-06.5-12 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-12. Immunity.

1. A person acting as agent pursuant to a ~~durable power of attorney for health care directive~~ or person authorized to provide informed consent ~~pursuant to section 23-12-13~~ may not be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the ~~terms of the durable power of attorney for health care and the provisions of this chapter or section 23-12-13.~~
2. A health care or long-term care services provider, or any other person acting for the provider or under the provider's control may not be subjected to civil or criminal liability, or be deemed to have engaged in unprofessional conduct, for any act or intentional failure to act done in good faith and with ordinary care if the act or intentional failure to act is done pursuant to the dictates of ~~the durable power of attorney for a health care directive~~, the directives of the patient's agent, ~~and the or other provisions of this chapter or section 23-12-13.~~
3. A health care provider who administers health care necessary to keep the principal alive, despite a health care decision of the agent to withhold or withdraw that health care, or a health care provider who withholds health care that the provider has determined to be contrary to reasonable medical standards, despite a health care decision of the agent to provide the health care, may not be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct if that health care provider promptly took all reasonable steps to:
 - a. Notify the agent of the health care provider's unwillingness to comply;
 - b. Document the notification in the principal's medical record; and
 - c. Arrange to transfer care of the principal to another health care provider willing to comply with the decision of the agent.

SECTION 14. AMENDMENT. Section 23-06.5-13 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-13. Guardianship authority - Conflicting declaration Presumptions and application.

1. Unless a court of competent jurisdiction determines otherwise, a ~~durable power of attorney for health care~~ the appointment of an agent in a health care directive executed pursuant to this chapter takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.

2. To the extent a durable power of attorney for health care conflicts with a declaration executed in accordance with chapter 23-06.4 that health care directives conflict, the instrument executed later in time controls.
3. The principal is presumed to have the capacity to execute a health care directive and to revoke a health care directive, absent clear and convincing evidence to the contrary.
4. A health care provider or agent may presume that a health care directive is legally sufficient absent actual knowledge to the contrary. A health care directive is presumed to be properly executed, absent clear and convincing evidence to the contrary.
5. An agent and a health care provider acting pursuant to the direction of an agent are presumed to be acting in good faith, absent clear and convincing evidence to the contrary.
6. A health care directive is presumed to remain in effect until the principal modifies or revokes it, absent clear and convincing evidence to the contrary.
7. This chapter does not create a presumption concerning the intention of an individual who has not executed a health care directive and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a health care directive.
8. A copy of a health care directive is presumed to be a true and accurate copy of the executed original, absent clear and convincing evidence to the contrary, and must be given the same effect as an original.
9. Death resulting from the withholding or withdrawal of health care pursuant to a health care directive in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.
10. The making of a health care directive under this chapter does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or withdrawal of health care from an insured principal, notwithstanding any term to the contrary.
11. A person may not prohibit or require the execution of a health care directive as a condition for being insured for, or receiving, health care services.
12. This chapter does not affect the right of a patient to make decisions regarding use of health care, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the provision, withholding, or withdrawal of health care.
13. Health care directives prepared under this chapter which direct the withholding of health care do not apply to emergency treatment performed in a prehospital situation.

SECTION 15. AMENDMENT. Section 23-06.5-15 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-15. Validity of previously executed durable powers of attorney or other directives. A health care directive executed before the effective date of this Act, which complies with the law in effect at the time it was executed, including former chapter 23-06.4, must be given effect pursuant to this chapter. This chapter does not affect the validity or enforceability of a durable powers power of attorney pertaining to for health care executed before July 17, 1994 the effective date of this Act.

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

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

SECTION 17. AMENDMENT. Section 23-06.5-17 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-17. Statutory Optional health care directive form of durable power of attorney. The statutory form of durable power of attorney is as follows following is an optional form of a health care directive and is not a required form:

**STATUTORY FORM DURABLE POWER OF ATTORNEY FOR
HEALTH CARE WARNING TO PERSON
EXECUTING THIS DOCUMENT**

This is an important legal document that is authorized by the general laws of this state. Before executing this document, you should know these important facts:

You must be at least eighteen years of age for this document to be legally valid and binding.

This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision.

This document gives your agent authority to request, consent to, refuse to consent to, or to withdraw consent for any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition if you are unable to do so yourself. This power is subject to any statement of your desires and any limitation that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of

your agent to make health care decisions for you if your agent authorizes anything that is illegal; acts contrary to your known desires; or where your desires are not known; does anything that is clearly contrary to your best interest.

Unless you specify a specific period, this power will exist until you revoke it. Your agent's power and authority ceases upon your death.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

This document revokes any prior durable power of attorney for health care.

You should carefully read and follow the witnessing procedure described at the end of this form. This document will not be valid unless you comply with the witnessing procedure.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

Your agent may need this document immediately in case of an emergency that requires a decision concerning your health care. Either keep this document where it is immediately available to your agent and alternate agents, if any; or give each of them an executed copy of this document. You should give your doctor an executed copy of this document.

1. DESIGNATION OF HEALTH CARE AGENT. I, _____

(insert your name and address)

do hereby designate and appoint: _____

(insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of an operator of a long-term care facility) as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a durable power of attorney for health care.

3. **GENERAL STATEMENT OF AUTHORITY GRANTED.** Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 below. You can indicate your desires by including a statement of your desires in the same paragraph.)
4. **STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.** (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

- a. Statement of desires concerning life-prolonging care, treatment, services, and procedures:

- b. Additional statement of desires, special provisions, and limitations regarding health care decisions:

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.) If you wish to make a gift of any

bodily organ you may do so pursuant to North Dakota Century Code chapter 23-06.2, the Uniform Anatomical Gift Act.

5. **INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.** Subject to any limitations in this document, my agent has the power and authority to do all of the following:

- a. Request, review, and receive any information, verbal or written, regarding my physical or mental health, including medical and hospital records.
- b. Execute on my behalf any releases or other documents that may be required in order to obtain this information.
- c. Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 above.)

6. **SIGNING DOCUMENTS, WAIVERS, AND RELEASES.** Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

- a. Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice".
- b. Any necessary waiver or release from liability required by a hospital or physician.

7. **DURATION.** (Unless you specify a shorter period in the space below, this power of attorney will exist until it is revoked.)

This durable power of attorney for health care expires on

(Fill in this space ONLY if you want the authority of your agent to end on a specific date.)

8. **DESIGNATION OF ALTERNATE AGENTS.** (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 4, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved. Your agent may withdraw whether or not you are capable of designating another agent.)

If the person designated as my agent in paragraph 4 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate

and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document; such persons to serve in the order listed below:

a. First Alternate Agent: _____

(Insert name, address, and telephone number of first alternate agent.)

b. Second Alternate Agent: _____

(Insert name, address, and telephone number of second alternate agent.)

HEALTH CARE DIRECTIVE

I _____, understand this document allows me to do ONE OR ALL of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make and communicate decisions for myself.

AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF

(I know I can change my agent or alternate agent at any time
and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II and/or Part III. None of the following may be designated as your agent: your treating health care provider, a nonrelative

employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.

When I am unable to make and communicate health care decisions for myself, I trust and appoint _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If

my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO
DO
IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE
DECISIONS FOR MYSELF
(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive and deciding about mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

_____ (1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.

_____ (2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE (I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

My fears about my health care:

My spiritual or religious beliefs and traditions:

My beliefs about when life would be no longer worth living:

My thoughts about how my medical condition might affect my family:

(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE
(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank).

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

If I were dying and unable to make and communicate health care decisions for myself, I would want:

If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my doctor:

Where I would like to live to receive health care:

Where I would like to die and other wishes I have about dying:

My wishes about what happens to my body when I die (cremation, burial):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following (initial one statement):

☐ Any needed organs and tissue.

☐ Only the following organs and tissue: _____

PART IV: MAKING THE DOCUMENT LEGAL

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

DATE AND SIGNATURE OF PRINCIPAL (YOU MUST DATE AND SIGN THIS ~~POWER OF ATTORNEY~~ HEALTH CARE DIRECTIVE)

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

(state)

(you sign here)

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

NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The person notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the execution of the document must not be a health care or long-term care provider

providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

Option 1: Notary Public

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

(Signature of Notary Public)

My commission expires _____, 20__.

Option 2: Two Witnesses

Witness One:

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box:
[].

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

(Signature of Witness One)

(Address)

Witness Two:

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this

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

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

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

(Signature of Witness Two)

(Address)

40. ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes ~~incapable~~ incapacitated. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is ~~incapable of making the principal's~~ not able to make health care decisions, I must notify the principal's physician.

(Signature of agent/date)

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

I have read a written explanation of the nature and effect of an appointment of a health care agent that is attached to my health care directive.

Dated this day of , 20 . _____
(Signature of Principal)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO RESIDENT OF LONG-TERM CARE FACILITY. (Only necessary if person is a resident of long-term care facility and Part I is completed appointing an agent. This statement does not need to be completed if the resident has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to _____ (name of principal) who signed this document and who is a

resident of _____ (name and city of facility). I am (check one of the following):

☐ A recognized member of the clergy.

☐ An attorney licensed to practice in North Dakota.

☐ A person designated by the district court for the county in which the above-named facility is located.

☐ A person designated by the North Dakota department of human services.

Dated on _____, 20____: _____ (Signature)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO HOSPITAL PATIENT OR PERSON BEING ADMITTED TO HOSPITAL. (Only necessary if person is a patient in a hospital or is being admitted to a hospital and Part I is completed appointing an agent. This statement does not need to be completed if the patient or person being admitted has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to _____ (name of principal) who signed this document and who is a patient or is being admitted as a patient of _____ (name and city of hospital). I am (check one of the following):

☐ An attorney licensed to practice in North Dakota.

☐ A person designated by the hospital to explain the health care directive.

Dated on _____, 20____: _____ (Signature)

SECTION 18. AMENDMENT. Section 23-06.5-18 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-18. Penalties.

1. A person who, without authorization of the principal, willfully alters or forges a ~~power of attorney~~ health care directive or willfully conceals or destroys a revocation with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures which hastens the death of the principal is guilty of a class C felony.
2. A person who, without authorization of the principal, willfully alters, forges, conceals, or destroys a ~~power of attorney~~ health care directive or willfully alters or forges a revocation of a ~~power of attorney~~ health care directive is guilty of a class A misdemeanor.
3. The penalties provided in this section do not preclude application of any other penalties provided by law.

SECTION 19. REPEAL. Chapter 23-06.4 of the North Dakota Century Code is repealed.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 233

HOUSE BILL NO. 1117

(Human Services Committee)

(At the request of the State Department of Health)

CANCER REGISTRY

AN ACT to amend and reenact section 23-07-01 of the North Dakota Century Code, relating to authority of the state department of health to maintain a cancer registry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07-01. Powers of state State department of health - Collection of public health information. The state department of health shall designate the diseases or conditions that must be reported. Such diseases or conditions may include contagious, infectious, sexually transmitted, or chronic diseases or any illness or injury which may have a significant impact on public health. The state department of health shall maintain a uniform statewide population-based registry system for the collection of data pertaining to the incidence, prevalence, risk factors, management, survival, mortality, and geographic distribution of cancer and reportable benign tumors.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 234

SENATE BILL NO. 2252

(Senators Schobinger, Bowman, Taylor)
(Representatives Iverson, Onstad, Owens)

DISEASE AND HIV EXPOSURE NOTIFICATION AND TESTING

AN ACT to amend and reenact subsection 3 of section 23-07.3-01 and subsections 1 and 9 of section 23-07.5-01 of the North Dakota Century Code, relating to notification of exposure to infectious diseases and to human immunodeficiency virus testing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Exposed individual" means a human being who had a significant exposure with a test subject and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, laboratory personnel, health care provider as defined in section 23-07.5-01, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including an individual rendering aid under chapter 32-03.1.

¹⁴⁹ **SECTION 2. AMENDMENT.** Subsections 1 and 9 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, laboratory personnel, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1.
9. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's or other individual's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or

¹⁴⁹ Section 23-07.5-01 was also amended by section 1 of House Bill No. 1410, chapter 235.

- c. Exposure that occurs by any other method of transmission defined by the state department of health as a significant exposure.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 235

HOUSE BILL NO. 1410

(Representatives Grande, Devlin, Kreidt)

(Senator J. Lee)

BLOODBORNE PATHOGEN EXPOSURE TESTING

AN ACT to amend and reenact sections 23-07.5-01, 23-07.5-02, 23-07.5-04, 23-07.5-06, and 23-07.5-07, paragraph 1 of subdivision b of subsection 10 of section 65-01-02, and sections 65-01-15 and 65-01-15.1 of the North Dakota Century Code, relating to testing for exposure to bloodborne pathogens; and to repeal chapter 23-07.3 of the North Dakota Century Code, relating to notification of exposure to infectious diseases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁰ **SECTION 1. AMENDMENT.** Section 23-07.5-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Bloodborne pathogen" means a microorganism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a an individual, including a patient, health care provider, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person an individual rendering aid under chapter 32-03.1, who is exposed to a bloodborne pathogen.
3. "Exposure" means a percutaneous injury, including a needle stick or cut with a sharp object; contact with blood, body fluid, or tissue of a mucous membrane or nonintact skin, including exposed skin that is chapped, abraded, or afflicted with dermatitis; or contact with other body fluids that are potentially infectious as determined under guidelines of the United States public health service.
2. "Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.

¹⁵⁰ Section 23-07.5-01 was also amended by section 2 of Senate Bill No. 2252, chapter 234.

3. 4. "Health care services" means any services included in the furnishing to any an individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any person an individual of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
4. "Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.
5. "Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus. "Health care provider" means an individual licensed, certified, or otherwise authorized by the law of this state to provide health care and includes personnel at the state crime laboratory or any commercial or research laboratory that handles blood, body fluid, or tissues.
6. "Informed consent for testing" means the written permission of an individual to be tested for the presence of the human immunodeficiency virus that the individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; the relevant risks, benefits, and potential alternatives for testing; and the individual has granted permission to be tested.
7. "Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus. "Personal representative" means any person who has authority under law to act on behalf of an individual or deceased individual in making decisions related to health care or health information.
8. "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred; the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician. "Test subject" means the individual who is the source of the blood, other bodily fluids, or tissue that caused the exposure.
9. "Significant exposure" means:
- a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
 - c. Exposure that occurs by any other method of transmission defined by the state department of health as a significant exposure.
10. "Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual

rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public health service to prevent transmission of disease.

SECTION 2. AMENDMENT. Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-02. Informed consent for testing - Exception.

1. Except when testing is otherwise ~~provided for~~ permitted by law, a health care provider, blood bank, blood center, or plasma center may not subject a ~~person~~ individual who is the source of an exposure to a test for the ~~presence of the human immunodeficiency virus bloodborne pathogens~~ unless the subject of the test, ~~the parent or legal guardian or custodian of the subject's personal representative if the subject is a minor who is the subject of the test, or the legal guardian of an~~ is incapacitated ~~person who is the subject of the test, first provides informed consent for testing as provided under subsection 2.~~
2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of the human immunodeficiency virus under subsection 4 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:
 - a. The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.
 - b. A statement of explanation that the test results may be disclosed as authorized by law.
 - c. Space specifically designated for the signature of the person providing informed consent for the testing and the date on which the consent is signed.
3. A health care provider or an exposed individual who had a significant exposure with another individual may subject If an individual who is the source of an exposure has had blood drawn that is available for testing and the individual has refused to grant consent to have that individual's blood tested for bloodborne pathogens, that individual's blood may be subjected to a test for the presence of the human immunodeficiency virus bloodborne pathogens, without that individual's consent, if all of the following apply:
 - a. A blood sample of the individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. The personal physician of the individual exposed, a physician or other qualified health care provider based on available information provided to the physician, determines and certifies in writing that

the individual had a significant an exposure. The certification must accompany the request for testing and disclosure.

- e. The test subject is capable of consenting when the test is requested; has been given an opportunity to be tested with consent, and has not consented.
 - e. Before and before testing; the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of human immunodeficiency virus bloodborne pathogens; that the test results may not be disclosed to no one without the test subject's consent authorization, except to the exposed individual, the individual's health care provider, the department, and any other person as authorized by law; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person of the test subject except for the purpose of having the test performed; and that a record of the test results may be placed kept in the test subject's exposed individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. Each exposed individual who had a significant an exposure and to whom test results are disclosed must first sign be given a document indicating the exposed individual's understanding that the exposed individual may not disclose the patient's test subject's identity and that disclosing the this information constitutes a class C felony.
4. A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.4 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:
- a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.
 - e. The provider or a person rendering aid under chapter 32-03.4 is capable of consenting when the test is requested; has been given an opportunity to be tested with consent, and has not consented.
 - e. Before testing; the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to the provider, the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does

not reveal the provider's identity. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating the patient's understanding that the patient may not disclose the provider's identity and that disclosing the information constitutes a class C felony.

5. 3. If an individual who is the subject of a significant an exposure is ~~unconscious or~~ incapable of giving informed consent for testing under this section, that consent may be obtained ~~in accordance with section 23-12-13~~ from the individual's personal representative. If an individual who is the subject of a significant an exposure dies without an opportunity to consent to testing, collection of appropriate specimens and testing for the presence of bloodborne pathogens, ~~including human immunodeficiency virus, hepatitis B, and hepatitis C~~ infection must be conducted ~~within twenty-four hours~~ as soon as reasonably possible. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the individual who experienced the significant exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the ~~dead person~~ deceased individual which are in the facility's control ~~within twenty-four hours~~ as soon as reasonably possible. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the ~~person who died~~ deceased individual shall attempt to obtain testing results of bloodborne pathogens of the deceased ~~within twenty-four hours~~ individual as soon as reasonably possible from the facility where it is believed results exist. The test results must be provided to the physician providing care for the individual who experienced the significant exposure.
6. 4. A test for bloodborne pathogens must be conducted according to recommendations of the United States public health service. Any testing done pursuant to subsection 2 or 3, 4, or 5 must be conducted in a reasonably expedient manner. ~~An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate~~ The district court for issuance of in the county where the alleged exposure occurred or in which the individual to be tested resides shall issue an order directing another the individual, patient, or provider with whom the individual had a significant who was the source of an exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the test subject to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition bloodborne pathogens. An affidavit from a physician or other qualified health care provider showing that an

exposure has occurred is prima facie evidence of those facts. The affidavit may not be excluded as hearsay if the affidavit is based on evidence generally relied on by a health care provider, including statements from the provider's patient. The record of any court hearing conducted under this subsection is confidential. The court ~~may~~ shall issue an order requiring testing under this subsection ~~only~~ if:

- a. ~~The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the test subject's blood is not available to be used to test for the human immunodeficiency virus;~~
 - b. The court finds probable cause to believe that the ~~person~~ individual petitioning for the testing had a ~~significant an~~ significant exposure with the test subject;
 - c. ~~b.~~ The petition substitutes a pseudonym for the true name of the test subject;
 - d. ~~c.~~ The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
 - e. ~~d.~~ The proceedings are conducted in camera ~~unless the subject of the test agrees to a hearing in open court;~~ and
 - f. ~~e.~~ The court imposes appropriate safeguards against unauthorized disclosure which must specify the ~~persons~~ individuals who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
7. ~~An exposed individual may request two tests of the test subject after a significant exposure. Each test may be requested as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than nine months after a significant exposure. The test subject must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.~~
5. If the court issues an order for testing, the court may order the confinement of the test subject until blood is drawn for testing or issue an order establishing reasonable security for the individual's attendance at the test site. This order may be modified or extended.
8. 6. ~~A health care provider who subjects a patient an individual to a significant an exposure must notify the patient individual of the exposure. A health care provider witnessing a significant an exposure may report the exposure pursuant to any appropriate facility or employer guidelines to which the provider may be subject. The knowing failure to inform a patient an individual of a significant an exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.~~
7. The exposed individual shall pay the expense of testing. However, if the exposure occurs at an employee's workplace, the worker's employer

shall pay the expense of testing unless otherwise provided by subdivision b of subsection 10 of section 65-01-02. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

SECTION 3. AMENDMENT. Section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

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

- 1- ~~Obtain~~ obtain from the test subject; ~~the subject's parent, legal guardian, or custodian if the subject is a minor; or the test subject's legal guardian~~ personal representative if the subject is a minor or is incapacitated, informed consent for testing; unless testing is otherwise authorized by law.
- 2- ~~Maintain a record of the consent received under subsection 1-~~
- 3- ~~Maintain~~ In addition, the health care provider shall maintain a record of the test results obtained.

SECTION 4. AMENDMENT. Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-06. Expanded disclosure of test results prohibited. ~~A person~~

1. The results of a test for bloodborne pathogens may be disclosed only to the individual who was tested; to an exposed individual for whom a test was conducted; and to the exposed individual's health care provider as provided by this chapter, and as permitted under title 45, Code of Federal Regulations, part 164, section 512.
2. An exposed individual to whom the results of a test for ~~the human immunodeficiency virus~~ bloodborne pathogens have been disclosed under this chapter may not disclose the test results except as permitted under subsection 3, or as otherwise authorized by law.
3. If the test results are disclosed under this chapter to a law enforcement officer who was exposed to a bloodborne pathogen, the officer may disclose the test results to any other law enforcement officer who has direct physical contact with the test subject, if in the professional judgment of the officer the disclosure is necessary for the health and safety of the other officer and the disclosure is limited to the minimum amount of information needed to protect the health and safety of that officer.

SECTION 5. AMENDMENT. Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-07. Civil liability. ~~Any person~~ An individual who knowingly violates section 23-07.5-06 is liable to the subject of the test for actual damages and costs

plus exemplary damages. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

¹⁵¹ **SECTION 6. AMENDMENT.** Paragraph 1 of subdivision b of subsection 10 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the ~~bureau~~ organization may pay for preventive treatment for ~~significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3,~~ a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

SECTION 7. AMENDMENT. Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15. Yearly documentation required for firefighter and law enforcement officer. Except for benefits for ~~an exposure to infectious disease a~~ bloodborne pathogen as defined by ~~sections 23-07.3-01 and 23-07.3-02~~ section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years. ~~Any full-time paid firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section until July 1, 1997.~~

SECTION 8. AMENDMENT. Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or ~~an exposure to infectious disease a~~ bloodborne pathogen as defined by ~~sections 23-07.3-01 and 23-07.3-02~~ section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or

¹⁵¹ Section 65-01-02 was also amended by section 1 of House Bill No. 1120, chapter 610, and section 1 of House Bill No. 1171, chapter 611.

partial disability or death unless the contrary is shown by competent evidence. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

SECTION 9. REPEAL. Chapter 23-07.3 of the North Dakota Century Code is repealed.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 236

HOUSE BILL NO. 1190

(Representatives Devlin, Kreidt, Metcalf)
(Senators Fischer, J. Lee, Robinson)

BASIC CARE BED MORATORIUM

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Except when a nursing facility that converts licensed nursing facility bed capacity to basic care bed capacity or the alzheimer's and related dementia pilot projects established under section 50-06-14.4 requests licensure of the facility's existing beds as basic care bed capacity, or unless the applicant demonstrates to the department and to the department of human services that a need for additional basic care bed capacity exists, the department may not issue a license under this chapter for any additional bed capacity above the state's gross licensed capacity of one thousand four hundred seventy-one beds, adjusted by any reduction in beds before July 31, 2003; Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, 2003 2005, and July 31, 2007, except when:
 - a. A nursing facility converts nursing facility beds to basic care; or
 - b. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile radius have been occupied at ninety percent or more for the previous twelve months.
2. Transfers of existing basic care beds from one municipality basic care facility to another municipality must be approved if the licensing requirements are met, during the period August 1, 2003, to July 31, 2007. Existing licensed entity is permitted. Transferred basic care beds released by a facility and transferred to another facility must become licensed within forty-eight months of transfer. The entity receiving the transferred beds or any new facility may seek to participate in the basic care assistance program. If the entity can demonstrate that individuals can be cared for at a more independent level and that this service will delay entry into the nursing facility, the entity may be approved for basic care assistance funds.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, 2003, to July 31, 2007, may occur, only to the extent that the facility transferring beds reduces the facility's licensed

~~capacity by an amount equal to the number of beds transferred. If an Indian tribe acquires basic care beds, the tribal facility must meet state licensing requirements for those beds within forty-eight months of acquisition. A tribal facility may seek to participate, within forty-eight months of any transfer of beds, in the basic care assistance program. Basic care assistance payments may only be made to a tribal facility that agrees to participate and adhere to all federal and state requirements of the basic care assistance program including participation, screening, ratesetting, and licensing requirements.~~

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

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 237

SENATE BILL NO. 2227

(Senators Erbele, Heitkamp, Wardner)
(Representatives Brandenburg, Guleson, Kretschmar)

HOUSING AUTHORITY JURISDICTION

AN ACT to amend and reenact sections 23-11-01, 23-11-03, 23-11-11, 23-11-14, 23-11-20, 23-11-21, 23-11-23, 23-11-24, and 23-11-29 of the North Dakota Century Code, relating to housing authority jurisdiction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-11-01 of the North Dakota Century Code is amended and reenacted as follows:

23-11-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Area of operation" includes:
 - a. In the case of a housing authority of a city having a population of less than fifteen thousand inhabitants, ~~such the~~ city and the area within five miles [8.05 kilometers] of the territorial boundaries ~~thereof of the city~~, but does not include any area ~~which lies that is~~ within the territorial boundaries of another city.
 - b. In the case of a housing authority of a city having a population of fifteen thousand inhabitants or more, ~~such the~~ city and an area within ten miles [16.10 kilometers] of ~~such the~~ territorial boundaries ~~thereof of the city~~, but does not include any area ~~which lies that is~~ within the territorial boundaries of another city.
 - c. In the case of a housing authority of a county, all of the county except that portion ~~which lies that is~~ within the territorial boundaries of any city.
2. "Auditor" means the city auditor or the county auditor, as ~~the case may be appropriate~~.
3. "Authority" or "housing authority" means any of the public corporations created by section 23-11-02.
4. "Bonds" means any bonds, notes, certificates, debentures, or other obligations issued by an authority ~~pursuant to any provision of~~ under this chapter.
5. "City" means any city having a population of more than five thousand inhabitants according to the last federal census and "the city" means the particular city for which a particular housing authority is created, except that it does not mean a city ~~which that~~ has agreed to or will so elect to participate in a county housing authority pursuant to section 54-40-08, provided that any city with less than five thousand population which has

an activated city housing authority prior to July 1, 1971, or a city with less than five thousand population which has determined a shortage of safe or sanitary dwelling accommodations in the city pursuant to section 23-11-03, must be included within this definition.

6. "County" means any county in this state and "the county" means the particular county for which a particular housing authority is created.
7. "Federal government" includes the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.
8. "Governing body" means, in the case of a city, the city council, or the board of city commissioners, ~~as the case may be appropriate~~, and in the case of a county, the board of county commissioners.
9. "Housing project" may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection ~~therewith~~ with the same and means any work or undertaking:
 - a. To demolish, clear, or remove buildings from any slum area, and ~~such~~ the work or undertaking may embrace the adaption of ~~such~~ the area to public purposes, including parks or other recreational or community purposes;
 - b. To provide or assist in providing decent, safe, and sanitary urban or rural housing dwellings, apartments, or other living accommodations and related facilities for persons of low or moderate income, ~~and in need of housing, including single-family and multifamily residential units designed and financed under this chapter. This work or undertaking may include the planning of buildings and improvements, land, equipment, facilities, and other the acquisition of real or personal property that may be needed immediately or in the future for housing purposes, the construction, reconstruction, alteration and repair of new or existing buildings, and the provisions of all equipment, facilities, and other real or personal property~~ for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparations, landscaping, gardening, administrative, community, health, recreational, educational, welfare, or other purposes; or
 - c. To accomplish a combination of any of the foregoing projects.
10. "Mayor" means the mayor of the city or the president of the board of city commissioners, ~~as the case may be appropriate~~.
11. "Obligee of the authority" or "obligee" includes any bondholder, trustee for any bondholders, or lessor demising to the authority property used in connection with a housing project, or any assignee of ~~such~~ a lessor's interest, or of any part ~~thereof~~ of an interest, and the federal government when it is a party to any contract with the authority.
12. "Persons of low income" means ~~persons~~ individuals or families who lack the amount of income which is necessary, as determined by the

authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

13. "Persons of moderate income" means individuals or families whose income is not adequate without governmental assistance to cause private enterprise to provide a substantial supply of decent, safe, and sanitary housing at rents or prices within their financial means.
14. "Real property" includes all ~~lands~~ land, including improvements and fixtures ~~thereon~~ on the land and property of any nature appurtenant ~~thereto to the land~~ or used in connection ~~therewith~~ with the land, and every estate, interest, and right, legal or equitable, ~~therein~~ in the land, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by ~~such~~ the liens.
44. 15. "Slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or by reason of any combination of these factors, are detrimental to safety, health, and morals.

SECTION 2. AMENDMENT. Section 23-11-03 of the North Dakota Century Code is amended and reenacted as follows:

23-11-03. When resolution declaring housing authority to be necessary shall be adopted.

1. The governing body of the city or county, as ~~the case may be~~ appropriate, shall adopt a resolution declaring that there is need for a housing authority in the city or county if ~~# the governing body finds:~~
4. ~~That that~~ unsanitary or unsafe inhabited dwelling accommodations exist in the city or county; or
2. ~~That that~~ there is a shortage of safe or sanitary dwelling accommodations in ~~such~~ the city or county available to persons of low or moderate income at rentals they can afford to pay.
2. In determining whether dwelling accommodations are unsafe or unsanitary, ~~said~~ the governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space, and access available to the inhabitants of ~~such~~ the dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions which endanger life or property by fire or other causes exist in ~~such~~ the buildings.

SECTION 3. AMENDMENT. Section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

23-11-11. Powers of authority. An authority has the following powers and duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.

3. ~~Repealed by S.L. 1973, ch. 80, § 24.~~
4. To have perpetual succession.
5. 4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
6. 5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with ~~the provisions of~~ this chapter, as are necessary to carry into effect the powers and purposes of the authority.
7. 6. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation.
8. 7. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part ~~thereof~~ of a housing project, within ~~its~~ the authority's area of operation.
9. 8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants ~~thereof~~ of a housing project.
10. 9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor ~~shall~~ comply with requirements as to minimum wages and maximum hours of labor and any conditions ~~which~~ that the federal government may have attached to ~~its~~ the financial aid ~~of~~ for the project.
11. 10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges ~~therefor~~ in the housing project.
12. 11. To own, hold, and improve ~~real or personal~~ property.
13. 12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any ~~real or personal~~ property or any interest ~~therein~~ in property.
14. 13. To acquire real property by the exercise of the power of eminent domain.
15. 14. To sell, lease, exchange, transfer, assign, pledge, or dispose of any ~~real or personal~~ property, or any interest ~~therein~~ in property.
16. 15. To insure, or provide for the insurance of, any ~~real or personal~~ property, or any operation of the authority, against any risks or hazards.
17. 16. To procure insurance or guaranties from the federal government of the payment of any debts, or parts ~~thereof~~ of debts, secured by mortgages on any property included in any of ~~its~~ the authority's housing projects, whether the debts were incurred by the authority or not.
18. 17. To invest any funds held by ~~it~~ the authority in reserves or sinking funds, or any funds not required for immediate disbursement, in property or

securities in which savings banks may legally invest funds subject to ~~their~~ a savings bank's control.

- ~~19.~~ 18. To purchase its bonds at a price not more than the principal amount ~~thereof of the bonds~~ and accrued interest, ~~and all bonds a bond~~ so purchased ~~shall be~~ is canceled.
- ~~20.~~ 19. To investigate, in ~~its~~ the authority's area of operation, living, dwelling, and housing conditions and the means and methods of improving the same.
- ~~21.~~ 20. To determine, within ~~its~~ the authority's area of operation, where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low or moderate income.
- ~~22.~~ 21. To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing the slum areas within ~~its~~ the authority's area of operation and the problem of providing dwelling accommodations for the persons of low or moderate income, and to cooperate with the city, county, or state, or any political subdivision ~~thereof~~, in any action taken in connection with ~~such~~ these problems.
- ~~23.~~ 22. To engage in research, studies, and experimentation on the subject of housing within ~~its~~ the authority's area of operation.
- ~~24.~~ 23. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for ~~its~~ the authority's information.
- ~~25.~~ 24. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance.
- ~~26.~~ 25. To make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within ~~its~~ the authority's area of operation, ~~its~~ the authority's findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.
- ~~27.~~ 26. To issue bonds from time to time for any of its corporate purposes.
- ~~28.~~ 27. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by ~~it~~ the authority.
- ~~29.~~ 28. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within ~~its~~ the authority's area of operation.
- ~~30.~~ 29. To take over or lease or manage any housing project or undertaking constructed or owned by the federal government.

34. 30. To comply with ~~such~~ conditions and to enter into ~~such~~ mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out ~~the provisions of this subsection and the preceding subsection~~ section.
32. 31. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project.
33. 32. To exercise all or any part or combination of powers ~~herein~~ granted.
34. 33. To exercise within ~~its~~ the authority's area of operation the authority granted to the industrial commission under section 54-17-07.6.
34. To exercise the power to provide operation and maintenance expenses under subdivision a of subsection 23 of section 23-11-24.
35. To exercise the power to issue general obligation bonds in accordance with chapter 21-03.
36. To develop a plan identifying the public purposes of the authority's ownership, conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes, and a plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur and to effectuate the plan.
35. 37. To exercise ~~such~~ other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections ~~24~~ 23, ~~25~~ 24, and ~~26~~ 25, may act through one or more of the commissioners or through other persons designated by ~~it~~ the authority. ~~No provision~~ Provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies ~~is~~ are not applicable to an authority unless there is specific provision to that effect by the legislative assembly. The construction of a housing project is a public improvement for which an authority is subject to the competitive bidding requirements of chapter 48-01.1.

SECTION 4. AMENDMENT. Section 23-11-14 of the North Dakota Century Code is amended and reenacted as follows:

23-11-14. Rentals and tenant selection. In the operation or management of housing projects, an authority at all times shall observe the following duties with respect to rentals and tenant selection:

1. ~~# The authority may rent or lease the dwelling accommodations therein only in the project solely to persons of low or moderate income.~~
2. ~~# The authority may rent or lease the dwelling accommodations therein only in the project solely at rentals within the financial reach of such persons of low or moderate income.~~
3. ~~# The authority may rent or lease to a tenant dwelling accommodations consisting only solely of the number of rooms which it deems the authority determines necessary to provide safe and sanitary~~

accommodations to the proposed occupants ~~thereof~~, without overcrowding.

4. ~~§~~ The authority may not accept ~~any person~~ persons of low income as a tenant in any housing project if the ~~person individual or persons family~~ who would occupy the dwelling accommodations ~~have~~ has an aggregate annual income in excess of five times the annual rental of the quarters to be furnished ~~such person the individual or persons family~~. In computing the rental for this purpose, there must be included in the rental the average annual cost to the occupant, as determined by the authority, of heat, water, electricity, gas, cooking, and other necessary services or facilities, whether ~~or not~~ the charge for ~~such the~~ services and facilities is in fact included in the rental.
5. ~~§~~ The authority shall prohibit subletting by tenants.

SECTION 5. AMENDMENT. Section 23-11-20 of the North Dakota Century Code is amended and reenacted as follows:

23-11-20. Bonds - Types which may be issued.

1. An authority may issue ~~such types any type of bonds bond~~ as it may determine the authority determines necessary for the purpose of financing housing for persons of low or moderate income, including bonds a bond on which the interest and principal are payable:
 4. a. Exclusively from the income and revenues of the housing project financed with the proceeds of ~~such bonds the bond~~ or with ~~such the~~ proceeds together with a grant from the federal government in aid of ~~such the~~ project;
 2. b. Exclusively from the income and revenues of certain designated housing projects whether ~~or not they~~ the projects are financed in whole or in part with the proceeds of ~~such bonds the bond~~; or
 3. c. From ~~its~~ the authority's revenues generally.
2. The bonds and other obligations of the authority are not payable out of any funds or properties other than those of the authority. ~~Any of such~~ These bonds, however, may be secured additionally by a pledge of any loan, grant, or contribution, or part of the same, from the federal government or other source of a pledge of any income or revenues or by a mortgage on any housing project, projects, or other property of the authority.

SECTION 6. AMENDMENT. Section 23-11-21 of the North Dakota Century Code is amended and reenacted as follows:

23-11-21. Bonds - Liability - Tax exempt. Neither the commissioners of an authority nor any person executing bonds of the authority is liable personally ~~thereon~~ on the bonds by reason of the issuance ~~thereof~~ of the bonds, nor is any city, county, or state, or political subdivision ~~thereof~~, liable ~~thereon on the bonds~~. The bonds and other obligations of an authority are not a debt of the city, county, or state, nor of any political subdivision ~~thereof~~, and must so state on their the face of the bond. ~~They~~ The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. ~~Such~~ The bond obligations

are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and the bonds, together with the interest ~~thereon~~ on the bonds and income ~~therefrom~~, from the bonds are exempt from taxation. The tax exemption provisions of this chapter are considered part of the contract for the security of the bond obligations authorized by this chapter and do not need to be restated in the bond obligations.

SECTION 7. AMENDMENT. Section 23-11-23 of the North Dakota Century Code is amended and reenacted as follows:

23-11-23. Bonds - Validity when officer who signs bond is no longer in office - Deemed issued for housing project. If any of the commissioners or officers of an authority whose signatures appear on any bonds or coupons cease to be ~~such commissioners~~ a commissioner or officers officer before the delivery of the bonds, the signatures are valid and sufficient for all purposes the same as if the ~~commissioners commissioner or officers officer~~ had remained in office until the delivery had been completed. Any bonds issued ~~pursuant to the provisions of the~~ under this chapter must be fully negotiable. In an action, suit, or proceeding involving the validity or enforceability of any bond of an authority or of the security ~~therefor~~ for the bond, the bond must be deemed conclusively to have been issued for a housing project if the bond recites that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low or moderate income. The project ~~conclusively must be deemed to have been~~ is planned, located, and constructed in accordance with ~~the purposes and provisions of~~ this chapter if ~~such a~~ this statement is contained in the bond.

SECTION 8. AMENDMENT. Section 23-11-24 of the North Dakota Century Code is amended and reenacted as follows:

23-11-24. Provisions of bonds, trust indentures, and mortgages. In connection with the issuance of bonds or the incurring of obligations under leases; and in order to secure the payment of ~~such~~ the bonds or obligations, an authority, in addition to ~~its~~ the authority's other powers, has power:

1. To pledge all or any part of ~~its~~ the authority's gross or net rents, fees, or revenues to which ~~its~~ the authority's right then exists or thereafter may come into existence.
2. To mortgage all or any part of ~~its real or personal~~ the authority's property then owned or thereafter acquired.
3. To covenant against pledging all or any part of ~~its~~ the authority's rents, fees, and revenues, or against mortgaging all or any part of ~~its real or personal~~ the authority's property, to which ~~its~~ the authority's right or title then exists or thereafter may come into existence, or against permitting or suffering any lien on any ~~such~~ revenues or property.
4. To covenant with respect to limitations on ~~its~~ the authority's right to sell, lease, or otherwise dispose of any housing projects or any part ~~thereof~~ of a housing project.
5. To covenant as to what other or additional debts or obligations may be incurred by ~~it~~ the authority.

6. To covenant as to the bonds to be issued and as to the issuance of ~~such~~ bonds in escrow or otherwise, and as to the use and disposition of the proceeds ~~thereof~~ of the bonds.
7. To provide for the replacement of lost, destroyed, or mutilated bonds.
8. To covenant against extending the time for the payment of ~~its~~ the authority's bonds or interest ~~thereon~~ on the bonds.
9. To redeem the bonds, to covenant for ~~their~~ the bonds' redemption, and to provide the terms and conditions ~~thereof~~ of redemption.
10. To covenant, subject to the limitations contained in this chapter, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made ~~thereof~~ of the same.
11. To create, or to authorize the creation of, special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in ~~such~~ these funds.
12. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent ~~thereto~~, and the manner in which ~~such~~ consent may be given.
13. To covenant as to the use of any or all of ~~its real or personal~~ the authority's property.
14. To covenant as to the maintenance of ~~its real and personal~~ the authority's property, the replacement ~~thereof~~ of property, the insurance to be carried ~~thereon~~ on property, and the use and disposition of insurance moneys.
15. To covenant as to the rights, liabilities, powers, and duties arising upon the breach by ~~it~~ the authority of any covenant, condition, or obligation.
16. To covenant and prescribe as to events of default and terms and conditions upon which any or all of ~~its~~ the authority's bonds or obligations shall become, or may be declared, due before maturity, and as to the terms and conditions upon which ~~such~~ the declaration and ~~its~~ the declaration's consequences may be waived.
17. To vest in a trustee or trustees or in the holders of bonds, or any proportion of ~~them~~ trustees or holders, the right to enforce the payment of the bonds or any covenants securing or relating ~~thereto~~ to the bonds.
18. To vest in a trustee or trustees the right, in the event of a default by the authority, to take possession and to use, operate, and manage any housing project or part ~~thereof~~ of the housing project, to collect the rents and revenues arising ~~therefrom~~ from the housing project, and to dispose of ~~such~~ these moneys in accordance with the agreement of the authority with ~~said~~ the trustee.

19. To provide for the powers and duties of a trustee or trustees and to limit the liabilities ~~thereof~~ of the trustee.
20. To provide the terms and conditions upon which the trustee or trustees or the holders of bonds, or any proportion of ~~them~~ trustees or holders, may enforce any covenant or rights securing or relating to the bonds.
21. To exercise all or any part or combination of the powers ~~herein~~ granted in this section.
22. To make covenants ~~other than, and~~ and in addition to, the covenants ~~herein~~ expressly authorized, of like or different character.
23. To make ~~such~~ such covenants and to do any ~~and all such~~ and all such acts and things as may be necessary, convenient, or desirable in order to secure ~~its~~ the ~~authority's~~ authority's bonds, or, in the absolute discretion of ~~said~~ said the authority, as will tend to make the bonds more marketable notwithstanding that ~~such~~ such the covenants, acts, or things ~~may are~~ are not ~~be~~ be enumerated ~~herein~~, including:
 - a. To the payment of the principal of and interest on bond obligations, when due, there may be pledged as a first charge and lien the gross revenues of the housing project financed in whole or in part by the obligations, and the governing city or county may covenant to provide additional funds for the benefit of that housing project to the extent that the gross revenues in excess of those debt service requirements are not also sufficient from time to time to pay the reasonable operating and maintenance expenses of that housing project.
 - b. The principal amount of the issue must be approved by the governing body of the city or county in which the housing project is located and whose general obligation is pledged. Public hearings must be held on issuance of the obligations by the city or county in which the housing project is located. The hearings must be held at least fifteen days, but not more than one hundred twenty days, before the sale of the obligations.

SECTION 9. AMENDMENT. Section 23-11-29 of the North Dakota Century Code is amended and reenacted as follows:

23-11-29. Tax exemptions and payments in lieu of taxes. The property of an authority used for low-income housing, including an authority created under Indian laws recognized by the federal government, is declared to be public property used for essential public and governmental purposes and is exempt from all taxes and special assessments of the ~~city, the county, the state, or any political subdivision thereof~~. In lieu of ~~such~~ such taxes or special assessments, an authority may agree to make payments to the ~~city, county, state, or any such political subdivision~~ city, county, state, or any such political subdivision for improvements, services, and facilities furnished ~~thereby by the state or political subdivision~~ for the benefits of a housing project, but in no event may such. The payments may not exceed the estimated cost ~~to such city, county, or political subdivision~~ of the improvements, services, or facilities to be so furnished. Notwithstanding any other provision of law, the property of an authority used for

moderate income housing is exempt from all taxes of the state or any political subdivision except special assessments unless specifically exempted from the special assessment by the political subdivision.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 238

SENATE BILL NO. 2345

(Senators Every, Triplett)
(Representatives Devlin, Nelson, Vigesaa)

HOUSING AUTHORITY COMMISSIONER COMPENSATION

AN ACT to amend and reenact section 23-11-05 of the North Dakota Century Code, relating to the compensation of housing authority commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-11-05 of the North Dakota Century Code is amended and reenacted as follows:

23-11-05. Commissioners of authority - Appointment, qualifications, tenure, compensation. When the governing body of a city adopts a resolution, declaring there is need for a housing authority, ~~it the governing body~~ promptly shall notify the mayor of ~~such the~~ adoption. Upon receiving ~~such the~~ notice, the mayor shall appoint five persons as commissioners of the authority ~~created for said city~~. When the governing body of a county adopts a resolution declaring there is need for a housing authority, ~~said the governing body~~ shall appoint five persons as commissioners of the authority ~~created for said county~~. The commissioners who are first appointed must be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of ~~their~~ appointment, and ~~thereafter~~, after that time each commissioner must be appointed for a term of office of five years except that all vacancies must be filled for the unexpired term. A commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner must be filed with the auditor of the city or county, as the case may be, and ~~such the~~ certificate is conclusive evidence of the due and proper appointment of ~~such the~~ commissioner. A commissioner, other than one who is a county commissioner, may receive ~~ten dollars up to forty-five dollars~~ a day for each day necessarily devoted to the work of the office and is entitled to the necessary expenses, including traveling expenses, ~~incurred in the discharge of these duties~~. The per diem compensation provided for in this section may not exceed ~~three~~ six hundred dollars in any one fiscal year. A commissioner, other than one who is a county commissioner, also may be compensated for the necessary expenses, including travel expenses, incurred in the discharge of the commissioner's duties.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 239

SENATE BILL NO. 2300

(Senators Kilzer, G. Lee)
(Representatives Kaldor, Kingsbury)

SMOKING RESTRICTIONS

AN ACT to create and enact a new section to chapter 23-12 and a new section to chapter 34-06 of the North Dakota Century Code, relating to smoke-free exceptions and the authority of the labor commissioner; to amend and reenact sections 23-12-09, 23-12-10, 23-12-10.2, and 23-12-11 of the North Dakota Century Code, relating to smoke-free environments; to repeal section 23-12-10.1 of the North Dakota Century Code, relating to smoking area signage; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-09 of the North Dakota Century Code is amended and reenacted as follows:

23-12-09. Smoking in public places of public assembly and places of employment - Definitions. In sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise requires:

1. "Place of public assembly" means:

- a. Enclosed theaters; auditoriums; gymnasiums; elevators; libraries; vehicles used in public transportation; rooms in which persons are confined as a matter of health care, including the waiting room, restroom, lobby, or hallway of a hospital, nursing home, rest home, or other health care institution or facility, and waiting areas in all public transportation terminals.
- b. Any building or other enclosed structure owned or leased by the state, its agencies, or political subdivisions, and all public education buildings.
- c. Each portion of a building or enclosed structure that is not included in this subsection if it has the seating capacity for fifty or more persons and is available to the public, including restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, regardless of whether the establishments serve alcoholic beverages.

The term does not include private, enclosed rooms of residence, establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises, including private and fraternal organizations, or areas used for the service of alcoholic beverages and which are physically separate rooms within food service establishments.

2. "Smoke drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or other smoking equipment in a place of public

assembly outside a designated smoking area. "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, or restaurant that is not licensed primarily or exclusively to sell alcoholic beverages if the bar is in a separately enclosed area.

2. "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
3. "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
4. "Employer" means an individual, business, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
5. "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.
6. "Health care facility" means any office or institution providing health care services, including a hospital; clinic; ambulatory surgery center; outpatient care facility; nursing, basic, or assisted living facility; and laboratory.
7. "Health care services" include medical, surgical, dental, vision, chiropractic, and pharmaceutical services.
8. "Place of employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, and stairs.
9. "Public place" means an enclosed area to which the public has access or in which the public is permitted, including a publicly owned building or office, and enclosed areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including bars; bingo facilities; child care facilities subject to licensure by the department of human services, including those operated in private homes when any child cared for under that license is present; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities.

including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores; rooms, chambers, places of meeting or public assembly, including school buildings; service lines; shopping malls; sports arenas, including enclosed places in outdoor arenas; theaters; and waiting rooms.

10. "Publicly owned building or office" means a place owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.

11. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served, including coffee shops, cafeterias, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

12. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

13. "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.

3- 14. "Smoking" means ~~carrying~~ possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted ~~smoking equipment~~ tobacco product in any manner or in any form.

15. "Sports arena" means any facility or area, whether enclosed or outdoor, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

16. "Truckstop" means a roadside service station and restaurant that caters to truckdrivers.

SECTION 2. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10. Designation of smoking areas Smoking restrictions - Exceptions - Retaliation - Application. Smoking is not permitted outside of designated smoking areas in places of public assembly as provided in this section. Smoking areas may be designated only by proprietors of privately owned buildings or by public officials having general supervisory responsibility for government buildings. No smoking area may be designated in a place in which smoking is prohibited by the state fire marshal. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily,

during the course of daily business, expand the designated smoking area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
 - a. Public places; and
 - b. Places of employment.
2. The following areas are exempt from subsection 1:
 - a. Private residences, except when operating as a child care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.
 - b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.
 - c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of places of employment, except a sports arena.
 - e. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
 - f. Bars.
 - g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.
 - h. Separately enclosed areas in truckstops which are accessible only to adults.
3. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
4. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.
5. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 3. AMENDMENT. Section 23-12-10.2 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10.2. Complaints and enforcement - City and county ordinances and home rule charters. ~~The state department of health is designated to receive reports or complaints from any person regarding violations of sections 23-12-09 through 23-12-11.~~

1. ~~State agencies with statutory jurisdiction over places of public assembly may a state-owned building or office shall enforce sections 23-12-09 through 23-12-11 section 23-12-10.~~ These agencies include the fire marshal department, state department of health, department of human services, legislative council, and office of management and budget. The agencies may mutually agree as to the manner in which enforcement is to be accomplished and may ~~amend their~~ adopt administrative rules to ensure compliance with ~~sections 23-12-09 through 23-12-11~~ section 23-12-10, including referral of violations to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.

~~Authorities other than state agencies may conduct inspections and report violations to state agencies, or enforce smoking policies, rules, or ordinances more stringent than those contained in sections 23-12-09 through 23-12-11.~~

2. A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions than those provided under sections 23-12-09 through 23-12-11. Nothing in this Act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of environmental tobacco smoke. This subsection does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

SECTION 4. A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

Exceptions - Medical necessity.

1. Notwithstanding the provisions of any other state or local law, a patient may smoke in a hospital licensed by the state or on the grounds of a hospital licensed by the state if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff.
2. Notwithstanding the provisions of any other state or local law, a resident of a licensed basic care facility or a licensed nursing facility may smoke in the facility or on the grounds of the facility if approved by the board of the facility.

SECTION 5. AMENDMENT. Section 23-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23-12-11. Penalty. Any proprietor

1. An individual who smokes in an area in which smoking is prohibited under section 23-12-10 is guilty of an infraction.
2. An owner or other person with general supervisory responsibility over a place of public assembly who willfully fails to comply with sections

~~23-12-09 through 23-12-11 is subject to a fine not to exceed one hundred dollars per violation a public place or place of employment who willfully fails to comply with section 23-12-10 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.~~

SECTION 6. A new section to chapter 34-06 of the North Dakota Century Code is created and enacted as follows:

Authority of labor commissioner - Exception. Notwithstanding section 34-06-03, the labor commissioner may not adopt rules relating to sections 23-12-09 through 23-12-11. If the labor commissioner is made aware of a possible violation of chapter 23-12, the commissioner may refer the violation to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.

SECTION 7. REPEAL. Section 23-12-10.1 of the North Dakota Century Code is repealed.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 240**HOUSE BILL NO. 1350**

(Representatives Maragos, D. Johnson)
(Senators Heitkamp, Nelson)

HEARING-IMPAIRED SMOKE ALARMS

AN ACT to amend and reenact section 23-13-15 of the North Dakota Century Code, relating to rentals to deaf persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. All residential rental property with the exception of property covered by section 23-09-02.1 must be equipped with smoke detection systems or other approved alarm systems for the protection of occupants of the property. Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The state fire marshal and local fire departments shall provide information concerning the installation of smoke detection systems to owners of residential rental properties. A system installed in a single-family rental dwelling must be maintained and inspected by the tenant occupying the single-family rental dwelling. In other dwellings, the landlord is responsible for installation and ensuring the proper operation of the system upon the occupancy of each new tenant. The tenant is responsible for maintaining the system during the tenant's occupancy.
2. The landlord of a residential dwelling unit shall provide an approved visual smoke detection system or other visual alarm system for fire if requested in writing by a tenant who is deaf. A landlord is not subject to this subsection if the rental property of that landlord does not exceed one building and that building does not exceed four residential dwelling units.
3. Nothing in this section may be construed to alter the provisions of chapter 54-21.3 regarding smoke detection systems or alarm systems for newly constructed residences.

- ~~3.~~ 4. Any property owner who willfully fails to install a system as required by this section is guilty of a class B misdemeanor.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 241

HOUSE BILL NO. 1191

(Representatives Devlin, Kreidt, Metcalf)
(Senators Fischer, J. Lee, Robinson)

LONG-TERM CARE BED MORATORIUM

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Notwithstanding sections 23-16-06 and 23-16-10, except when existing beds are converted for use by the alzheimer's and related dementia population under the projects provided for in section 50-06-14.4 or when a nursing facility converts basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to nursing facility bed capacity, the state department of health may not issue a license for any additional bed capacity above the state's gross licensed capacity of seven thousand one hundred forty beds, adjusted by any reduction in beds before July 31, 2003, a facility reverts basic care beds to nursing facility beds, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, 2003 2005, and July 31, 2007.
2. Transfers of existing beds from one municipality facility to another municipality must be approved if the state department of health licensing requirements are met, during the period August 1, 2003, to July 31, 2007. Existing licensed beds released by a facility and transferred to another facility entity is permitted. Transferred nursing facility beds must become licensed within forty-eight months of transfer. Nursing facility beds transferred before August 1, 2005, which are awaiting nursing facility licensure, may be converted to basic care licensure.
3. Transfer of existing beds from one municipality facility to a tribal reservation during the period August 1, 2003, to July 31, 2007, may occur, only to the extent that the facility transferring beds reduces the facility's licensed capacity by an amount equal to the number of beds transferred. A tribal facility may seek to participate, within forty-eight months of any transfer of beds, in the medical assistance program. Medical assistance payments may only be made to a medicaid-certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program including participation, screening, ratesetting, and licensing requirements. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the converted beds remain in the same facility and are not transferred, the

beds may revert to nursing facility status after one year of licensure as basic care beds.

4. Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of health of the facility's intent to convert bed capacity. Nursing facility beds that are converted to basic care may be transferred as basic care beds. However, upon the transfer, the basic care beds may not be relicensed as nursing facility beds.
5. If an Indian tribe acquires nursing facility beds, the tribal facility must meet state licensing requirements for those beds within forty-eight months of acquisition. A tribal facility may seek to participate in the medical assistance programs. Medical assistance payments may only be made to a medicaid certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program, including participation, screening, ratesetting, and licensing requirements.

Approved April 15, 2005

Filed April 18, 2005

CHAPTER 242

HOUSE BILL NO. 1279 (Representatives Porter, R. Kelsch) (Senator Cook)

BROWNFIELDS REMEDIATION AND INSTITUTIONAL CONTROLS

AN ACT to create and enact a new section to chapter 23-20.3 of the North Dakota Century Code, relating to contaminated properties; to amend and reenact sections 11-33-01 and 40-47-01 and subsection 1 of section 58-03-11 of the North Dakota Century Code, relating to institutional controls by counties, cities, and townships; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-33-01 of the North Dakota Century Code is amended and reenacted as follows:

11-33-01. County power to regulate property. For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the state department of health as provided in section 2 of this Act.

SECTION 2. A new section to chapter 23-20.3 of the North Dakota Century Code is created and enacted as follows:

Institutional controls, responsibility exemptions, and regulatory assurances for contaminated properties - Continuing appropriation.

1. The department may establish institutional controls or give site-specific responsibility exemptions or regulatory assurances to owners, operators, or lenders, as provided by this section for real property contaminated by regulated substances or other pollution or contamination regulated by the department under this chapter or chapter 61-28. To qualify for a site-specific responsibility exemption, the owner of the property, or the political subdivision establishing institutional controls under this section through its zoning authority, must:

- a. Delineate the vertical and horizontal extent and concentration of the pollution or contamination in soil and ground water;
 - b. Identify potential persons or receptors that may be impacted by the pollution or contamination, evaluate the potential for movement or migration of the pollution or contamination and potential pathways of exposure, and identify potential health or environmental impacts to persons or receptors based on the proposed property use;
 - c. Identify the past and current uses of the property, the current uses of contiguous properties, and zoning restrictions or regulations that apply to the property and contiguous properties;
 - d. Identify any surface water or ground water uses, or ground water wells, that may be impacted by the pollution or contamination;
 - e. Agree to comply with and complete any remediation or monitoring plan agreed to or ordered by the department as a condition of receiving a site-specific responsibility exemption, including monitoring of natural attenuation of pollution or contamination;
 - f. If remediation or monitoring of pollution or contamination is being conducted by a responsible party or governmental body other than the landowner or operator, agree to allow access for all monitoring or remedial activities reasonably related to the identified pollution or contamination;
 - g. Agree to any other reasonable institutional controls that are necessary to protect public health and welfare from pollution or contamination on the property or to satisfy environmental standards enforced by the department; and
 - h. Agree to comply with all institutional controls, letters of no further remediation, letters of no further action, or letters of regulatory assurance established or instituted under this section as a condition of receiving a property-specific or site-specific responsibility exemption or regulatory assurance.
2. "Institutional controls" are restrictions on the use and management of real property, including use and management of buildings or fixtures, that contain or prevent migration of regulated substances or other pollution or contamination, or protect receptors from exposure or the threat of exposure to regulated substances or other pollution or contamination. Institutional controls may apply during environmental remediation activities, or may apply to residual regulated substances, pollutants, or other pollution or contamination or their byproducts that may remain on property after active environmental remediation activities are concluded or while natural attenuation of regulated substances or other pollution or contamination is occurring. Institutional controls may be established by the department as follows:
- a. When an area made subject to institutional controls involves two or more property owners and an area larger than either one city block or ten acres [4.05 hectares], the department and the political subdivision having zoning authority over the property may agree to institutional controls relating to the identified area impacted by the

pollution or the contamination. Before the institutional controls become effective, they must be the subject of a public hearing and be established in the same manner as zoning regulations are established by that political subdivision. The political subdivision is responsible for providing all notices under this subdivision, but any public hearing must be held jointly by the political subdivision and the department.

- b. In addition or in the alternative, the department also may establish institutional controls by agreement to an environmental covenant with the owner of the real property. Before agreeing to any environmental covenants under this subdivision, all contiguous landowners to the property to which the covenants will attach must be notified by certified mail or by service by publication as provided in the North Dakota Rules of Civil Procedure. An environmental covenant must state that it is an environmental covenant that runs with the land; have a legally sufficient description of the real property subject to the covenant; describe activity or use limitations and terms of access for any monitoring or remediation; identify every holder who is a grantee of the covenant; be signed by every holder and the owner of the property before a notary public; and describe the name and location of any administrative record for the environmental response or remediation identified for the property under subsection 1. All environmental covenants must be filed with the county recorder of the county in which the property is located.
3. In addition or in the alternative to institutional controls, after completion of the assessments and requirements of subsection 1, the department may issue a letter of no further remediation or a letter of no further action to a property owner when an environmental remediation is completed on the site or property, or when no institutional controls are necessary to protect public health or welfare or to come into compliance with an environmental standard that has been violated and later corrected on the site or property.
4. Notwithstanding any institutional controls established for any real property, the department has access for inspection and enforcement for environmental violations as provided by law.
5. If there is any additional discharge or release of a regulated substance, pollutant, or contaminant on the property subject to institutional controls or regulatory exemptions that intermingles with the delineated pollution or contamination identified under subsection 1, or if the owner or operator of the property manages the property in a manner that causes the contamination to migrate to a neighboring contiguous property or results in the exposure of contaminants to receptors on the property, then institutional controls or regulatory exemptions established under this section are voidable by the department after a public investigatory hearing by giving written notice to the political subdivision and the current owner of the property subject to the institutional controls, as well as any lender holding a lien on the property identified under subsections 7 and 8. Culpability of the owner or operator of the property for any new or additional discharge, release, or movement of pollution or contamination, as well as responsibility for any offsite discharge or release or culpability for exposure of onsite or offsite

receptors to pollution or contamination, must be considered by the department in determining whether to void any institutional controls, and any final determination by the department to void an institutional control is subject to review under chapter 28-32. If the institutional control is an environmental covenant established under subdivision b of subsection 2, the written notice voiding the environmental covenant as well as a copy of the covenant being voided by the department must be filed with the county recorder of the appropriate county.

6. Institutional controls may also be terminated or amended at any time by written agreement between the department, the relevant political subdivision, the owner of the property, or other body or person subject to the institutional controls, as well as any identified lender, after giving notice as described in subsection 2. Letters of no further remediation, of no further action, or regulatory assurance may be amended by written agreement of the participating parties.
7. Before agreeing to any institutional controls or responsibility exemptions, the department may require insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on the property after the site-specific responsibility exemptions and institutional controls are established, and must require such insurance coverage or other financial assurance when the projected cost of an active monitoring or remediation program exceeds five hundred thousand dollars. The department may enter a joint agreement with affected political subdivisions, state or federal agencies, property owners, lenders, the administrator of the petroleum tank release compensation fund, or any responsible or potentially responsible party concerning payment for or funding of any insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on contaminated or affected properties. Such agreements do not waive the liability limitations that apply by law to the state, to state agencies, or to political subdivisions, except up to the amounts, and subject to the terms, conditions, and limitations, of any insurance policy or any financial assurance fund created by the joint agreement of the parties under this subsection. Any financial assurance fund must comply with chapters 59-01, 59-02, 59-03, and 59-04, and be managed for the benefit of the affected persons or community, but liability of the fund may not exceed the amount deposited with the fund.
8. Participation by a lender in an agreement under this section may not be construed as management of the property under chapter 32-40.1. Lenders who participate in an agreement under this section may not be held responsible for any environmental remediation on the site or property except as provided in subsection 3 of section 32-40.1-02. As part of an agreement under subsection 7, the department may issue a letter of regulatory assurance to a lender which states that the lender is not responsible for environmental remediation on the property or site, and which addresses other issues relating to responsibility, notice, violation of agreement under subsection 7 by the owner or operator, default, or other matters affecting potential environmental liability, investment, or redevelopment. A responsibility exemption of regulatory assurance given or granted to a lender under this section also applies to a lender's transferees or assigns, provided the party has had no prior involvement with or responsibility for the site of the environmental

release, and uses and manages the property after the transfer or assignment in compliance with institutional controls or other conditions established under this section and the requirements of this chapter and chapter 61-28.

9. The department may adopt rules to implement this section. The department may assess administrative fees in an amount and manner established by rule against responsible parties. In addition, by agreement of the participants, under subsection 7 the department may collect an administrative fee for a specific site or project to address the department's costs and expenses at that site or project, in an amount agreed to under subsection 7, or may collect an administrative fee in an amount set by rule from a person making a request for a responsibility exemption or regulatory assurance under this section. Any administrative fees collected under this section must be deposited by the department in a separate account in the department's operating fund and used only for administration of remediation activities under this chapter or chapter 61-28 and moneys deposited in this account are appropriated to the department on a continuing basis. Administrative fees may not be collected out of federal moneys or against the petroleum tank release compensation fund.
10. The administrator of the petroleum tank release compensation fund under chapter 23-37 may request recovery of expenditures the administrator has made at a remediation site from the separate account in the department's operating fund from fees collected under this section if recovery may not be made from a responsible party or as provided in chapter 23-37. If the department determines that sufficient funds are available without compromising the remediation project at the site, moneys in the separate account may be used to reimburse the petroleum tank release compensation fund for expenditures the administrator has made at the remediation site.
11. All letters of partial or complete exemption from responsibility for remediation or further action issued by the department under this section may be revoked by the department if any condition of the letters is violated; if institutional controls on the property are not complied with; or if the person, governmental body, or entity violates any provision of this chapter or chapter 61-28.
12. "Environmental covenant" means a covenant running with the land as established under this section.
13. "Natural attenuation" means the reduction in the mass or concentration in soils or groundwater of a regulated substance, pollutant, contaminant, and the products into which a substance breaks down, due to naturally occurring physical, chemical, and biological processes, without human intervention. "Enhanced natural attenuation" means the enhancement of natural attenuation at a site by the addition of chemicals, biota, or other substances or processes. "Monitored natural attenuation" means the monitoring of natural attenuation as it occurs. The department in its discretion may consider natural attenuation or enhanced or monitored natural attenuation as remediation alternatives for a site when pollution or contamination on a site or property does not pose a threat to human health or the environment, and reasonable safeguards are established under this section or other provisions of state or federal law.

14. "Regulatory assurance" means an assurance issued by the department concerning enforcement relating to existing contamination or pollution on a property or site based on compliance with conditions stated in a letter of regulatory assurance. A regulatory assurance is not voidable under subsection 5.
15. "Responsibility exemption" means a partial or complete exemption from responsibility for remediation or further action on a contaminated property or at a contaminated site based on compliance with the conditions identified in a letter of no further remediation or a letter of no further action. A responsibility exemption is voidable only against a person that violates an institutional control or a condition of a letter of no further action or no further remediation, or that is responsible for a new or additional release or migration of a regulated substance or pollutant on the property or site, or whose actions or negligence cause the violation, release, or migration.
16. "Responsible party" means a person who causes or contributes to an onsite or offsite release or discharge, or who is responsible for an illegal or unpermitted storage, of a pollutant or regulated substance in violation of this chapter or chapter 61-28, that results in the contamination or pollution of a property or site. "Potentially responsible party" means a person who is identified as a possible cause of, or contributor to, contamination or pollution on a site or property.
17. This section does not affect the authority of the department, the state, or its political subdivisions to exercise any powers or duties under this chapter or other provisions of state law with respect to any new or additional discharge or release or threatened discharge or release of a pollutant or regulated substance on a property or site regulated under this section, or the right of the department or any other person to seek legal or equitable relief against any person that is not subject to a liability protection provided under this section.

SECTION 3. AMENDMENT. Section 40-47-01 of the North Dakota Century Code is amended and reenacted as follows:

40-47-01. Cities may zone - Application of regulations. For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the state department of health as provided in section 2 of this Act.

SECTION 4. AMENDMENT. Subsection 1 of section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or

more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the state department of health as provided in section 2 of this Act.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 243

HOUSE BILL NO. 1291

(Representatives Brandenburg, Froelich, Kempenich, Nicholas)
(Senators Erbele, Taylor)

ANIMAL FEEDING OPERATIONS

AN ACT to amend and reenact sections 23-25-11 and 42-04-01 of the North Dakota Century Code, relating to animal feeding operations and livestock auction markets.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

23-25-11. Regulation of odors - Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
 - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or
 - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or

operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement.

- c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02 or 58-03-11, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.
3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree

of scientific certainty, and for which the state department of health has established a specific limitation by rule.

6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.
7.
 - a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under section 11-33-02, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
 - (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
 - (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
 - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [.80 kilometer].
 - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
 - (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].
 - b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the preexisting use that is closer.
 - c. For purposes of this section:
 - (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
 - (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
 - (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
 - (4) One cow-calf pair equals 1.0 animal unit;

- (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
 - (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
 - (7) One horse equals 2.0 animal units;
 - (8) One sheep or lamb equals 0.1 animal unit;
 - (9) One turkey equals 0.0182 animal unit;
 - (10) One chicken, other than a laying hen, equals 0.008 animal unit;
 - (11) One laying hen equals 0.012 animal unit;
 - (12) One duck equals 0.033 animal unit; and
 - (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.
9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections 11-33-02 and 58-03-11.

SECTION 2. AMENDMENT. Section 42-04-01 of the North Dakota Century Code is amended and reenacted as follows:

42-04-01. Agricultural operation defined. As used in this chapter, "agricultural operation" means the science and art of ~~production of~~ producing plants and animals useful to people, by a corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and ~~including, to a variable extent,~~ includes the preparation of these products for people's use and ~~their the disposal of these products by marketing or otherwise, and~~ other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 244

HOUSE BILL NO. 1243

(Representatives Uglem, D. Johnson, Porter, Vigesaa)
(Senators J. Lee, Warner)

EMERGENCY MEDICAL SERVICES PERSONNEL TRAINING

AN ACT to amend and reenact section 23-27-04.3 of the North Dakota Century Code, relating to emergency medical services personnel training.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

23-27-04.3. Emergency medical services personnel training, testing, certification, licensure, and quality review - Penalty. The state health council shall adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for emergency medical services personnel, instructors, and training institutions. Rules adopted must include a definition of minimum applicable standards, a definition of emergency medical services personnel, provide for a mechanism for certifying or licensing persons who have met the required standards, and provide a mechanism to review and improve the quality of care rendered by emergency medical services personnel, and define minimum standards for emergency medical services training institutions. Licensing as an emergency medical services training institution is optional. It is a class B misdemeanor for an individual to willfully misrepresent that individual's certification or licensing status as emergency medical services personnel. Quality review and improvement information, data, records, and proceedings are not subject to subpoena or discovery or introduction into evidence in any civil action.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 245**SENATE BILL NO. 2225**

(Senator Andrist)

HOSPITAL DISTRICT ELECTOR MEETINGS

AN ACT to amend and reenact section 23-30-05 of the North Dakota Century Code, relating to regular meetings of electors of hospital districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-30-05 of the North Dakota Century Code is amended and reenacted as follows:

23-30-05. Regular meeting to be held. A regular meeting of the electors who are owners of any interest in real property assessed for taxation in the district and who are residing within the boundaries of a district must be held ~~in the first quarter of each calendar year~~ at a time determined by the board of directors and special meetings may be called by the board of directors at any time. Notice ~~thereof~~ of a meeting must be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which ~~such the~~ district is situated. The meeting must be held not less than seven days nor more than fourteen days after the date of publication of ~~such the~~ notice.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 246

SENATE BILL NO. 2275

(Senators Cook, Krebsbach, Warner)
(Representatives R. Kelsch, Porter, Price)

HEALTH DISTRICT LEVY LIMITATIONS

AN ACT to amend and reenact subsection 3 of section 23-35-05 and subsection 1 of section 23-35-07 of the North Dakota Century Code, relating to property tax levy limitations of merged health districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 23-35-05 of the North Dakota Century Code is amended and reenacted as follows:

- Any two or more health districts may merge into a single health district upon a majority vote of the respective boards of health and a majority vote of the governing body of each county. The assets of each merging health district become the property of the newly created health district. Board of health membership of a new health district must be determined under section 23-35-03, unless otherwise decided by the board. The new health district maintains the same authority and powers of the previous health districts. The mill levy of the newly created health district is not limited by the old mill levy but may not exceed the amount allowed under section 23-35-07, unless one or more of the combining entities was previously levying more than five mills, in which case the mill levy for property within the former entity that was levying more than five mills may not exceed the cap, expressed in mills, as previously authorized for that entity.

SECTION 2. AMENDMENT. Subsection 1 of section 23-35-07 of the North Dakota Century Code is amended and reenacted as follows:

- A district board of health shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit this budget to the joint board of county commissioners for approval. The amount budgeted and approved must be prorated in health districts composed of more than one county among the various counties in the health district according to the taxable valuation of the respective counties in the health district. For the purpose of this section, "prorated" means that each member county's contribution must be based on an equalized mill levy throughout the district, except as otherwise permitted under subsection 3 of section 23-35-05. Within ten days after approval by the joint board of county commissioners, the district board of health shall certify the budget to the respective county auditors and the budget must be included in the levies of the counties. The budget may not exceed the amount that can be raised by a levy of five mills on the taxable valuation, subject to public hearing in each county in the health district at least fifteen days before an action taken by the joint board of county commissioners. Action taken by the joint board of county commissioners must be based on the record, including comments received at the public hearing. A levy under

this section is not subject to the limitation on the county tax levy for general and special county purposes. The amount derived by a levy under this section must be placed in the health district fund. The health district fund must be deposited with and disbursed by the treasurer of the district board of health. Each county in a health district quarterly shall remit and make settlements with the treasurer. Any funds remaining in the fund at the end of any fiscal year may be carried over to the next fiscal year.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 16, 2005

Filed March 17, 2005